

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

4 CASEY NELSON, ET AL * 4:17-CV-02171
5 V. * 9:59 A.M. to 12:38 P.M.
6 TEXAS SUGARS, INC., ET *
AL * JUNE 17, 2019

EXCERPT OF TRIAL - VOIR DIRE
BEFORE THE HONORABLE ALFRED H. BENNETT
VOLUME 1 OF 1 VOLUME

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VOLUME 1
(Excerpt of Trial - Voir Dire)

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1 (Beginning of requested excerpt, parties present, no
2 jury.)

3 THE COURT: The panel is here?

4 CASE MANAGER: Yes, sir.

09:59:33 5 THE COURT: Anything before the panel comes in,
6 gentlemen?

7 MR. BERLANGA: No, Your Honor.

8 MR. WALLACE: We have 20 minutes, is that right,
9 after you are done, per side?

09:59:41 10 THE COURT: Yes.

11 MR. WALLACE: Okay.

12 THE COURT: That's if you need the full
13 20 minutes.

14 MR. WALLACE: I hope I don't need to take it.

09:59:50 15 THE COURT: Very well.

16 MR. KING: Your Honor, opening statements
17 typically begin after lunch, right?

18 THE COURT: Yes.

19 MR. WALLACE: Judge, right before the panel comes
10:00:05 20 in -- it is only because of the courtroom configuration,
21 it's difficult sometimes to see on the other side of the
22 pillar -- if there is discussion, do you mind if
23 counsel --

24 THE COURT: Oh, no. You can move back and forth
10:00:15 25 to each side to see who is talking to you, yes.

1 MR. WALLACE: During your questioning though?

2 THE COURT: You can stand up quietly and take a
3 look and see who is talking, yes.

4 MR. WALLACE: Thank you.

10:00:26 5 THE COURT: All rise for the panel.

6 (Prospective jurors entered courtroom at 10:00 a.m.)

7 (At the bench.)

8 THE COURT: Who are those people?

9 CASE MANAGER: Interns.

10:01:42 10 THE COURT: They can take the jury box.

11 (Open court.)

12 THE COURT: Thank you. Please be seated.

13 Good morning, ladies and gentlemen of the jury panel.

14 PROSPECTIVE JURORS: Good morning.

10:02:15 15 THE COURT: Let's try it again. I know it's a
16 rainy Monday. Good morning, ladies and gentlemen of the
17 jury panel.

18 PROSPECTIVE JURORS: Good morning.

19 THE COURT: Much better. Welcome to the United
10:02:25 20 States District Court for the Southern District of Texas.
21 My name is Alfred Bennett. I am one of the judges here
22 for this court. It is my pleasure to welcome you here for
23 your jury service today in the case of Casey Nelson, et al
24 v. Texas Sugars, et al. This is a civil case, which is
25 numbered 4:17-CV-2171.

1 In calling you here today for jury service, we are
2 mindful of the enormous inconvenience we are imposing on
3 you. We know that, first and foremost, you have work
4 obligations. You have family obligations. We know that
10:03:11 5 the commute here was not easy. We know that parking in
6 downtown is not easy, and it's expensive. So it is our
7 plan we are going to endeavor to be as efficient as
8 possible to return you to your private lives.

9 However, we would not impose on your time and your
10 convenience except for the fact that we have very
11 important work here today, and some of you will assist us
12 in that work. The parties here have a dispute, and they
13 have been unable to resolve it. As a result, it has now
14 come to the point that we are going to try this case to a
10:03:56 15 jury who will determine certain facts which will then be
16 applied under the law such that this dispute can be
17 resolved.

18 We are asking you here to do this for a pretty simple
19 reason. We believe that the American jury system is the
10:04:15 20 most powerful method yet devised to ascertain the truth.
21 The right to a trial by jury is the only one of our rights
22 mentioned in both the text of the United States
23 Constitution and the Bill of Rights, and the Declaration
24 of Independence also makes explicit reference to a jury
25 trial.

1 And finally, many of you may think that jury trials
2 may not be as important as they once were and that perhaps
3 that I, as the judge, could settle this dispute and not
4 impose on your time.

10:04:50 5 I want to bring to your attention there was once a
6 study done among over 600 federal judges, and it was a
7 simple question posed to them. If you were engaged in a
8 dispute, how would you want that resolved? By the judge
9 or by a jury? Over 90 percent of federal district court
10 judges, such as myself, chose a jury. And the reason for
11 that is that having fresh, unbiased eyes on a problem
12 produces the best result, and that's what you are going to
13 be in this case.

14 You have common sense. You are out there every day
15 raising your children, tending to your work duties,
16 visiting with your neighbors, moving through your day.
17 That common experience and common sense is what the
18 founders of this nation wanted us to draw upon in ensuring
19 that citizens such as yourselves with disputes could come
10:05:52 20 into a courtroom and get them resolved.

21 In addition, the young men and women that we are so
22 proud of in our country's uniform, they are out there
23 making this country safe around the world, here at home.
24 We take great pride in what they do. We may not always
10:06:11 25 agree with every mission that they go on, but without

1 question I think I can say with confidence that we all
2 take great pride in those young men and women who have
3 made the decision to serve their country.

4 Well, the democracy that they are protecting, this is
10:06:30 it in action. This does not happen in countries around
6 the world. This is an open courtroom. Anyone can walk
7 through those doors and watch these proceedings from
8 beginning to end. This unique component of our democracy
9 is what levels the playing field between the rich and the
10 poor, corporations and individuals, government versus
11 individual. In this courtroom they are all equal and have
12 the opportunity to present their version, their side of a
13 case, and then it is decided by unbiased and impartial
14 jurors. So you are doing your part in that regard.

10:07:15 Today we will be selecting a jury of eight persons to
16 hear this civil case. This case is expected to last until
17 the close of business on Thursday. In this courthouse we
18 have had cases that have lasted much longer, weeks if not
19 months. I personally previously, not in this courthouse
10:07:39 20 but another courthouse, presided over a case that lasted
21 two -- a jury trial that lasted over two and a half
22 months.

23 So by way of the straw that you pull for your jury
24 service, to pull the straw for a four-day case is pretty
10:07:56 25 good, pretty remarkable for your stead. So we are asking

1 you to do your part for this short jury trial, as jury
2 trials go, to make sure that we are able to continue to do
3 our part under our democracy and as to what is required
4 for this branch of government.

10:08:19 5 This case will be unlike any other trials that you
6 have seen on TV. There won't be 90-second sound bites and
7 dramatic moments such as that. You will see real lawyers
8 and a real judge at work with the assistance of a jury to
9 consider versions of the facts such that you can
10 ultimately decide what the facts are.

11 Again, I have given these lawyers certain time
12 constraints. We have discussed extensively how long this
13 trial is going to take. So we're going to be as efficient
14 as possible. It won't be perfect. Nothing run by humans
15 is. So -- but we are going to be efficient to make sure
16 we can get you back to your private lives as soon as
17 possible.

18 This portion of the trial is called voir dire or voir
19 dire. It is where we select the jury. I expect this to
20 take approximately an hour and a half, such that we're
21 going to go up to approximately lunch, select a jury; and
22 those of you who have not been selected can be released.

23 Although we call this process jury selection, it is
24 actually one of deselection, and there are a couple of
25 ways a juror can be deselected. Potential jurors can be

1 excused for cause, meaning if they have strong beliefs or
2 feelings about the subject matter of this case or the
3 parties, then they could not reasonably be expected to be
4 fair and impartial.

10:09:57 5 Although, in most cases, individuals are able to set
6 aside their beliefs such that they can follow the law,
7 listen impartially to counsel, and then make a decision
8 without passion being a part of it. In certain instances,
9 others are just -- their beliefs are too strongly held to
10 set aside those beliefs or feelings, and that person would
11 not be a good juror for this case.

12 An example of that. If this -- and it's not. If this
13 was a child pornography case and you have children, you
14 may have such strong views about that that you just
15 couldn't fairly listen to the case. If this was a case
16 involving injury to a child, you could just say, I can not
17 be fair. We would understand that. And the subject
18 matter of this case may be such that you have had previous
19 experience with the subject matter or have a particular
20 view of the parties or the subject matter of the case.
21 We're going to go into that.

22 The lawyers -- the second way that a juror could be
23 deselected, the lawyers have a certain number of what are
24 called peremptory challenges. That is that they can
25 strike a person for no reason whatsoever.

1 Once this portion of the trial again is selected, the
2 eight folks, the first eight folks who are remaining will
3 get the opportunity to take their seat in the jury box
4 such that we can proceed with the trial.

10:11:38 5 Voir dire or voir dire -- here in Texas we say it two
6 ways -- it's a French term meaning "to speak the truth."
7 So you have taken an oath to participate in this trial and
8 tell your -- have your answers to be truthful, a truthful
9 response to the questions that are posed to you.

10:12:03 10 I will tell you something about this case, the
11 parties, the lawyers, and the witnesses; and I ask that
12 all of your answers be truthful. Even if we're just
13 asking you to raise your hand if the answer applies to
14 you, part of your oath is to raise your hand when the
10:12:21 15 answer applies to you.

16 What we are looking for and what the law requires is a
17 jury of impartial jurors who will decide the case based
18 solely on the evidence and the law. If you were seated at
19 either table as either the plaintiff or the defendant, you
10:12:39 20 would want that. You would want to be able to walk into a
21 courtroom and to have the case decided solely -- solely on
22 the facts of the case and the law, not any other unknown
23 reason or the motive of someone else involved. And that's
24 what we are asking of you. That's what these parties are
10:13:00 25 asking of you. And that's what I, as the judge, will

1 require of you, such that we can follow the law.

2 The right to a trial by an impartial juror was
3 considered so fundamental, as I mentioned earlier, that we
4 have put it as the Seventh Amendment to our constitution.
10:13:18 5 Your presence here today and your participation in the
6 jury selection process preserves this fundamental right.

7 Very often you hear people talk about certain rights
8 in the Bill of Rights and how important that they are,
9 from freedom of religion, to freedom of speech, to freedom
10 of the press. Well, this right sits alongside those
11 rights and is just as important and it requires your
12 participation to come to light. That is why you are so
13 essential to our system and why all of us -- myself, the
14 lawyers, and the parties -- are grateful that you answered
10:13:59 15 your jury summons and that you are here today.

16 You will be the judges of the facts. I'm the judge of
17 the law, but you will be the judges of the facts. Your
18 job is to decide if the plaintiffs have proven their case
19 by a preponderance of the evidence when it comes to
10:14:17 20 questions of fact. That is to decide whether the
21 plaintiffs have met their burden of proof, which I will
22 explain to you in detail a little later.

23 My function as the judge is to decide the law and
24 apply the law. As jurors, you must be guided by the law
10:14:36 25 as I give it to you. The things that the lawyers tell

1 you, their arguments and questions, are not evidence. The
2 evidence that you will hear will come from witnesses that
3 have taken an oath and who will sit on the witness stand
4 and testify before you. There may be documents which will
5 be introduced in evidence for your consideration. Only
6 those things are evidence.

7 Now, I want to tell you who the parties are in this
8 case and give you a little bit about the case and then I'm
9 going to ask you questions and then the lawyers will have
10 a chance to follow-up as well.

11 We have juror forms for each of you. So we know a
12 little bit about you. If you need to respond to any
13 question, again, please raise your hand. Some of you when
14 you -- we have microphones hanging down from the ceiling
15 that will be able to pick up your voice. However, some of
16 you just may be soft talkers, and I may ask you to stand.

17 We have a court reporter who is sitting here who is
18 taking down everything that is being said, and she is
19 recording it. And if you are a soft talker, she may not
20 be able to hear you. So I may ask you to stand such that
21 I can hear you. I'm not picking on you or trying to draw
22 attention to you, but it's important that she hears you
23 such that she can do her job.

24 Some of my questions may be or may be considered
25 embarrassing. If such, my goal is not to embarrass

1 anyone. If I ask a question and you have an answer that
2 you think may be of an embarrassing nature, raise your
3 hand and say, "Judge, I want to talk to you about that in
4 private" or "Can we talk about that later?" I'll make a
10:16:23 5 note, and I'll give you the opportunity to come up without
6 35 of your new best friends sitting next to you listening
7 in.

8 Again, my goal is not to embarrass you, but we must
9 get the answers such that we know that the folks who are
10 10:16:41 sitting in the jury box are essentially fair and
11 impartial.

12 I keep pointing to the jury box, which is not empty.
13 Over the summer, the courts hire interns to come. They
14 are law students who come and work for us during the
15 10:16:54 summer to give them experience. So we have interns who
16 are in the jury box. My interns are sitting over here.
17 And so they will come in and out. So those are some of
18 the folks who are just coming in to observe. Remember, I
19 said this is an open trial. Anyone can come in and watch.
20 10:17:13 Obviously, for law students who are serving here over the
21 summer, it's a huge benefit for them to get to observe
22 legal proceedings such as this.

23 So the parties have prepared a brief summary of the
24 case, which I have approved, which I'm going to read to
25 10:17:33 you now.

1 In the United States District Court for the Southern
2 District of Texas, Houston Division, Casey Nelson, et al
3 v. Texas Sugars doing business as Moments, et al, in Civil
4 Action 4:17-CV-2171.

10:17:51 5 The plaintiffs in this case are Maylene Velasco, Casey
6 Nelson, Kristal Garcia, Presley Lange, and Veronica
7 Gonzalez. They work as exotic dancers at a gentleman's
8 club named Moments located in Pasadena, Texas. The
9 defendant, Texas Sugars, Inc., owns Moments.

10:18:16 10 This is a dispute over payment of wages. Plaintiffs
11 sued Moments under the Fair Labor Standards Act or the
12 FLSA. The FLSA is a federal law that governs the payment
13 of minimum wages and overtime compensation. One of the
14 main disputes in this case is whether the plaintiffs are
10:18:36 15 considered employees under the FLSA. Workers who are
16 employees are entitled to be paid minimum wage and
17 overtime. Workers who are not employees under the FLSA,
18 such as independent contractors, are not entitled to be
19 paid minimum wage or overtime.

10:18:59 20 Now I want to introduce the parties to the case. The
21 first thing that I'm going to do is I'm going to ask
22 plaintiffs' counsel to introduce himself, his co-counsel,
23 and I'm going to see if any of you know him.

24 So with that being said, Counsel.

10:19:17 25 MR. BERLANGA: Good morning and good morning.

1 PROSPECTIVE JURORS: Good morning.

2 MR. BERLANGA: My name is Warren Berlanga. This
3 is my co-counsel, Kelly Cook and, also, Brad Wyly.

4 THE COURT: Does anyone know counsel for the
10:19:28 5 plaintiffs? If so, please raise your hand.

6 PROSPECTIVE JURORS: (No response.)

7 THE COURT: Gentlemen, if you could walk down
8 here and let them get a better look at you.

9 MR. BERLANGA: (Complying.)

10 THE COURT: No one. Very well.

11 Mr. Berlanga, would you call out the names of your
12 clients, please.

13 MR. BERLANGA: Yes. My clients are Casey Nelson,
14 Maylene Velasco, Kristal Garcia, Presley Lange, and
10:19:55 15 Veronica Gonzalez.

16 THE COURT: Once again, Counsel.

17 MR. BERLANGA: Casey Nelson, Presley Lange,
18 Kristal Garcia, Veronica Gonzalez, and Maylene Velasco.

19 THE COURT: Anyone know the plaintiffs in the
10:20:09 20 case? Do any of those names sound familiar? If so,
21 please raise your hand. I'm looking to my left. I see no
22 hands. I'm looking to my right, and I see no hands.

23 Counsel, do you have anyone else here with you?

24 MR. BERLANGA: Yes, we do. We have our paralegal
10:20:28 25 here, Your Honor.

1 THE COURT: Would you introduce her.

2 MR. BERLANGA: Ladies and gentlemen, this is our
3 paralegal Maria. She is one of the best in the business.

4 THE COURT: Does anyone know counsel's paralegal?

10:20:45 5 PROSPECTIVE JURORS: (No response.)

6 THE COURT: No. Thank you, Counsel.

7 Counsel for the defense.

8 MR. WALLACE: Thank you, Your Honor.

9 My name is Casey Wallace. I'm counsel for Texas
10 Sugars, Inc. doing business as Moments in Pasadena. With
11 me is my colleague Will King, our paralegal Marissa Reyna,
12 and my client Alex Khorshidpanah.

13 THE COURT: Counsel, if you'll walk down to my
14 left.

10:21:15 15 Does anyone know the defense legal team? If so,
16 please raise your hand. Anyone on my left? If so, please
17 indicate by raising your hand. I see no hands. Very
18 well.

19 Counsel, to my right.

10:21:29 20 Does anyone know the defense legal team to my right?
21 If so, please raise your hand.

22 PROSPECTIVE JURORS: (No response.)

23 THE COURT: I see no hands.

24 MR. WALLACE: Thank you, Your Honor.

10:21:43 25 THE COURT: Counsel, if you'll remain standing.

1 No, not -- the defense counsel. Defense counsel mentioned
2 the name of his corporate client. So would you please
3 describe again the name of the establishment and where it
4 is located, sir.

10:21:57 5 MR. WALLACE: Yes, Your Honor. Thank you.

6 I represent Texas Sugars, Inc. doing business as
7 Moments. It is located in Pasadena, Texas. And my
8 corporate representative here today is the president or,
9 actually, the general manager, I should say, of Texas
10 Sugars, Inc., and it's Mr. Alex Khorshidpanah.

11 THE COURT: Does anyone know Mr. Khorshidpanah?
12 He walked with counsel and no hands were raised. So I
13 assume that remains the same.

14 More importantly, the name of the corporate defendant
15 is Texas Sugars, Inc. It runs a gentleman's club by the
16 name of Moments located in Pasadena. An uncomfortable
17 moment. On my left, does anyone -- is anyone familiar
18 with the gentleman's club Moments located in Pasadena? If
19 so, please raise your hand.

20 10:22:47 I know. I'm sorry. It is the day after Father's Day.

21 PROSPECTIVE JUROR: I know where it is. I just
22 haven't been.

23 THE COURT: I'll let you say that on the record.

24 25 10:23:03 So, first of all, is anyone familiar -- has anyone
driven by Moments? On my left, okay, Juror Number 3.

1 Anyone else on my left? No. Anyone on my right?

2 PROSPECTIVE JUROR: (Raised hand.)

3 THE COURT: Juror Number 36. All right.

4 So let me start with Juror Number 3. Again, driven by
10:23:25 5 Moments. You indicated, I think I heard you say, you have
6 driven by the place and you have seen it; is that correct?

7 PROSPECTIVE JUROR: That is correct.

8 THE COURT: Other than having seen this business
9 from your car, are you otherwise familiar with it?

10 PROSPECTIVE JUROR: No.

11 THE COURT: Very well. Thank you, sir.

12 Juror Number 36, are you familiar with the club
13 Moments?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Okay. Do you want to talk to me in
16 private or can you tell me something further from the
17 audience?

18 PROSPECTIVE JUROR: I can tell you now.

19 THE COURT: Yes, sir. Proceed.

20 PROSPECTIVE JUROR: Did you ask me a question?

21 THE COURT: Yes. How are you familiar with
22 Moments?

23 PROSPECTIVE JUROR: I have driven by it.

24 THE COURT: You have driven by it. Okay. Other
10:24:05 25 than having driven by the establishment Moments, are you

1 otherwise familiar with it?

2 PROSPECTIVE JUROR: No, sir.

3 THE COURT: Very well. Thank you. All right.

4 That was easier than I thought. Thank you. Please have a
5 seat.

6 Very well. In addition -- I forgot to ask this one
7 time, and it was my mistake -- does anyone know me?

8 Again, my name is Judge Alfred Bennett. Before coming to
9 the federal bench, I was on the state bench. So does
10 anyone know me?

11 PROSPECTIVE JURORS: (No response.)

12 THE COURT: Anyone to my left? I see no hands.

13 Anyone to my right? I see no hands.

14 I'm going to have my court staff to stand and
15 introduce themselves. My law clerk, who is present.

16 CASE MANAGER: Poorav Rohatgi.

17 THE COURT: Does anyone know my law clerk?

18 PROSPECTIVE JURORS: (No response.)

19 THE COURT: No hands to my left. No hands to my
20 right.

21 Ms. Edwards. This is Lisa Edwards, my case manager,
22 who if you are selected for the jury you'll get to know a
23 little bit more. Anyone to my left? No hands. Anyone to
24 my right? No hands.

25 And I'm not going to have her stand. This is

1 Ms. Wells, the court reporter. Does anyone know the court
2 reporter? Anyone to my left? No hands. Anyone to my
3 right? No hands. Very well. Thank you.

4 And, Mr. King, I forgot to ask. Other than your
10:25:37 5 corporate representative, are there any other witnesses
6 you need to identify that may be called by the defense?

7 MR. KING: Yes, Your Honor. We may call Archie
8 Khorshidpanah. He also goes by Mahmoud Khorshidpanah. We
9 may call a gentleman named Jermaine. His last name
10 escapes me at the moment.

11 MR. WALLACE: Mr. Davis.

12 MR. KING: Jermaine Davis. Todd Moore, who is a
13 manager at Moments.

14 THE COURT: Could you pull the microphone. I
10:26:13 15 want you to repeat those names so that those on the left
16 can hear you.

17 MR. KING: Absolutely. Let me start over here.
18 We may call an individual named Christin Pichardo
19 Hernandez.

10:26:26 20 THE COURT: Stop there. Anyone on my left know
21 the gentleman? No. Anyone on my right? No.

22 MR. KING: We may call a witness named Felicia
23 Garcia.

24 THE COURT: Anyone know Ms. Garcia to my left or
10:26:39 25 anyone to my right? No hands. Thank you.

1 MR. KING: We may call a witness named Marissa
2 Villareal.

3 THE COURT: Anyone to my left? No hands. Anyone
4 to my right? No hands.

10:26:50 5 PROSPECTIVE JUROR: (Raised hand.)

6 THE COURT: Oh, sir. Your juror number is 24.

7 PROSPECTIVE JUROR: All those names are very
8 common.

9 THE COURT: Very familiar. Okay. So the last
10 name you've indicated that you may -- it sounded familiar?

11 PROSPECTIVE JUROR: I mean, all the last names
12 that you've mentioned are very common. So unless you see
13 a picture of the person --

14 THE COURT: I appreciate that.

10:27:13 15 PROSPECTIVE JUROR: -- you know. I would be
16 lying if I say no. Maybe I do.

17 THE COURT: Okay. But as you sit here today, do
18 any of those names trigger a person that you know
19 specifically?

10:27:25 20 PROSPECTIVE JUROR: I'm a teacher. So I have had
21 those names before.

22 THE COURT: Okay. Other than that, as you sit
23 here, that's your reaction to hearing those names?

24 PROSPECTIVE JUROR: Yes.

10:27:35 25 THE COURT: Thank you, sir.

1 All right. Mr. King, anything else?

2 MR. KING: We may call a witness named Gloria
3 Grimaldo. She also goes by Susie.

4 THE COURT: Anyone to my left? No hands. Anyone
10:27:48 5 to my right? No hands.

6 MR. KING: As I mentioned, we may call Mahmoud
7 Archie Khorshidpanah.

8 THE COURT: Anyone to my left? No hands. Anyone
9 to my right? No hands.

10:28:01 10 MR. KING: We may call Todd Moore, who is a
11 manager at Moments.

12 THE COURT: Anyone know Mr. Moore to my left? No
13 hands. Anyone to my right? No hands.

14 MR. KING: We may call a manager named Tracey
10:28:16 15 Tremaine.

16 THE COURT: Anyone to my left? No hands. Anyone
17 to my right? No hands. Very well.

18 MR. KING: We may call an individual named Leslie
19 Davis, who is a man and he is a manager at Moments.

10:28:28 20 THE COURT: Anyone to my left? No hands. Anyone
21 to my right? No hands.

22 MR. KING: And finally, we may call an individual
23 named Laura Torres to the stand.

24 THE COURT: Anyone to my left? No hands. Anyone
10:28:43 25 to my right? No hands.

1 Thank you, Mr. King.

2 Mr. Berlanga, you identified your clients. Were there
3 any other names you needed to mention?

4 MR. BERLANGA: No, Your Honor.

10:28:55 5 THE COURT: Thank you, sir.

6 Well, let me turn my attention back to the case
7 itself. Has anyone heard of this case? It's styled,
8 again, Casey Nelson, et al vs. Texas Sugars, Inc. Anyone
9 heard of the case? Anyone to my left? No hands. Anyone
10 to my right? No hands.

11 The other issue that I have mentioned was that this
12 was an FLSA case, a Fair Labor Standards Act case. Does
13 anyone to my left have any knowledge of an FLSA, Fair
14 Labor Standards Act case to my left? If so, please
15 indicate by raising your hand.

16 PROSPECTIVE JURORS: (No response.)

17 THE COURT: Very well. No hands. To my right,
18 does anyone have any knowledge of an FLSA, a Fair Labor
19 Standards Act case or action? To my right, if so, please
20 raise your hand.

21 PROSPECTIVE JUROR: (Raised hand.)

22 THE COURT: Juror Number 36, yes, sir. How do
23 you know of an FLSA case?

24 PROSPECTIVE JUROR: I have read about one in
25 Pasadena about something like this now.

1 THE COURT: Okay. Other than having -- was it
2 like in the press?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: Other than having read a press
10:30:19 5 account of an FLSA case, do you have any other knowledge
6 of an FLSA case?

7 PROSPECTIVE JUROR: No, sir.

8 THE COURT: As a result of having read the press
9 account about the FLSA case, does that create in you any
10 bias or prejudice such that you could not be fair and
11 impartial in the case?

12 PROSPECTIVE JUROR: No, sir.

13 THE COURT: Very well. Thank you. Juror
14 Number 20, yes, sir.

10:30:43 15 PROSPECTIVE JUROR: Would that also involve a
16 right to work case?

17 THE COURT: No. That's a little bit different,
18 and we are going -- this case, the central fact is going
19 to be overtime wages and minimum wages. That's going to
20 be the central issue here. The right to work is a --
21 that's another coin.

22 Anyone else to my left? Anyone else to my right?

23 PROSPECTIVE JUROR: (Raised hand.)

24 THE COURT: Juror Number 12, yes, ma'am.

10:31:15 25 PROSPECTIVE JUROR: The same thing as the other

1 juror. I have read cases on it in the SHRM articles, but
2 that's it.

3 THE COURT: Okay. Other than having -- or having
4 read a press account about an FLSA case, has that created
10:31:29 5 in you a bias or prejudice such that you could not be fair
6 and impartial in this case?

7 PROSPECTIVE JUROR: No, sir.

8 THE COURT: Very well. Anyone else?

9 PROSPECTIVE JURORS: (No response.)

10:31:38 10 THE COURT: Very well. The plaintiffs in this
11 case must prove their allegations by a preponderance of
12 the evidence. If the plaintiffs fail to prove their
13 allegations by a preponderance of the evidence, the jury
14 cannot return a verdict for the plaintiffs.

10:32:00 15 Preponderance of the evidence means enough credible
16 evidence to tip an evenly balanced scale to one side. So
17 if the scales of justice are evenly balanced, the
18 plaintiff must put more weight on their side, ever so
19 slightly, to tip the scales in their favor. That's called
10:32:24 20 a preponderance of the evidence. 50.1, they have to go
21 that much more in their favor to prevail. Does
22 everyone -- if the case ends at 50/50, the plaintiffs
23 lose. They have to tip the scales in their favor.

24 So does everyone understand the definition of
10:32:47 25 preponderance of the evidence? Does everyone -- let me

1 ask it another way. Does anyone not understand the
2 definition? If so, please raise your hand on my left.

3 PROSPECTIVE JURORS: (No response.)

4 THE COURT: I see no hands. Does anyone not
10:33:02 5 understand the definition on my right? Please raise your
6 hand.

7 PROSPECTIVE JURORS: (No response.)

8 THE COURT: I see no hands.

9 This is a different burden than the criminal burden of
10 beyond a reasonable doubt. Some of you may have served on
11 juries where you were on a criminal jury. That's a much
12 higher standard of proof. That's not in effect here.

13 In a civil case, where only money damages are at
14 issue, then the law allows for this lesser burden of
10:33:33 15 proof, preponderance.

16 In a criminal trial, where someone's liberty may be at
17 stake, the law requires a higher burden of proof. I'm
18 simply explaining that to say that this higher burden of
19 proof that you see in a criminal trial is not present and
10:33:50 20 will not be in use during this trial.

21 The weight and degree of credibility that a juror
22 gives to any piece of evidence, whether it is a witness's
23 testimony or a statement in a document, is up to the
24 juror, based on the juror's perception of the witness and
10:34:10 25 the witness's demeanor. It is also up to the juror to

1 decide the meaning and importance of each document or
2 other piece of evidence.

3 At the end of the trial, each juror must decide if the
4 plaintiffs have proven one or more of their claims by a
10:34:27 5 preponderance of the evidence. If so, you should find for
6 the plaintiffs on that claim. If not, then you must find
7 for the defendants.

8 Does anyone believe that they cannot hold the
9 plaintiff to their standard of proving their case by a
10:34:47 10 preponderance of the evidence, meaning if the plaintiffs
11 fail to convince you that their allegations are true,
12 would all of you -- would all of you be willing to return
13 a verdict for the defendants?

14 Meaning if the defendants -- I'm sorry. If the
15 plaintiffs fail to tip the scales in their favor, would
16 all of you be willing to apply the law as I have given it
17 to you and return a verdict for the defendant? If so,
18 please indicate by raising your hand. Meaning if the
19 plaintiffs fail to meet their burden of proof, can you
10:35:05 20 return a verdict for the defendant? Raise your hand to my
21 left.

22 PROSPECTIVE JURORS: (All hands.)

23 THE COURT: I see all the hands are raised.
24 Thank you.

10:35:38 25 Now, to my right, I'm going to repeat the question and

1 get you to raise your hands again. If the plaintiffs fail
2 to meet their burden of proof as I have explained to you,
3 can all of you return a verdict for the defendant? If so,
4 please raise your hand.

10:35:59 5 If the plaintiffs fail to meet their burden of proof,
6 what they have to prove to you, can you return a verdict
7 for the defendants? If so, please raise your hand.

8 PROSPECTIVE JURORS: (Several raised hands.)

9 THE COURT: All hands but Number 9. You are
10:36:12 10 looking at me.

11 PROSPECTIVE JUROR: I don't understand the
12 question. I'm sorry.

13 THE COURT: Perfectly fine. The plaintiffs have
14 to, on the scales of justice, move the evidence in their
10:36:23 15 favor ever so slightly. If the evidence remains at 50/50
16 or if the defendants have more weight in their favor, can
17 you return a verdict for the defense?

18 PROSPECTIVE JUROR: So if the plaintiff
19 fails to --

20 THE COURT: To prove their case.

21 PROSPECTIVE JUROR: -- prove their case, then why
22 should I have a decision?

23 THE COURT: By saying that they didn't prove
24 their case, that's a verdict for the defense.

25 PROSPECTIVE JUROR: Okay.

1 THE COURT: So with that explanation, can you do
2 so?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Yes. I want to make sure you
10:37:03 5 understand. If you don't understand --

6 PROSPECTIVE JUROR: I'll have to think about it
7 here.

8 THE COURT: Okay. Let me make sure we're clear.

9 The plaintiffs come in here with the burden of proof.
10:37:13 10 They have to prove their case to win. If they cannot
11 prove their case, then you would be required under the law
12 to return a verdict for the defense. Do you understand?

13 PROSPECTIVE JUROR: Yes. Yes.

14 THE COURT: Is there something unclear about
10:37:34 15 that?

16 PROSPECTIVE JUROR: Well, I mean, is it that
17 black and white?

18 THE COURT: Yes.

19 PROSPECTIVE JUROR: Okay.

10:37:41 20 THE COURT: Either the plaintiff wins or the
21 defense wins. If the plaintiffs fail to meet their burden
22 of proof, move the scales, the defense wins.

23 PROSPECTIVE JUROR: Right.

24 THE COURT: Right now, the defense is winning
10:37:54 25 because the plaintiffs haven't offered any evidence

1 whatsoever.

2 PROSPECTIVE JUROR: Well, they would lose -- they
3 would lose but they would not necessarily win. The
4 defense wouldn't necessarily win because if there is
5 associated compensation and all that for a verdict, I
6 mean.

7 THE COURT: I think you are going too far, and I
8 want to make sure we're clear because usually when I hear
9 one potential juror confused, another one may be confused.
10 That's why I'm taking the time to make sure you
11 understand, sir.

12 Walking into the courtroom, the plaintiffs have
13 alleged that the defendants did something wrong. Do you
14 follow me?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Okay. The plaintiffs have to prove
17 that allegation by a preponderance of the evidence,
18 meaning right now the scales of justice are evenly
19 balanced. For the plaintiff to win, they have to add more
20 evidence to their side, to tip the scales in their favor.
21 Do you understand?

22 PROSPECTIVE JUROR: Right.

23 THE COURT: If the plaintiffs fail to do that,
24 the scales don't move; or if the defense in rebutting the
25 plaintiffs' case adds more evidence to their side, the

1 verdict would be in favor of the defense.

2 Do you understand?

3 PROSPECTIVE JUROR: Correct.

4 THE COURT: Okay. If the plaintiffs failed to do
10:39:16 5 what they are required to do, the question is simply can
6 you return a verdict for the defense?

7 PROSPECTIVE JUROR: And so -- yes. The verdict
8 for the defense is the -- yeah.

9 THE COURT: Well --

10 PROSPECTIVE JUROR: The verdict being --

11 THE COURT: Not for the plaintiff.

12 PROSPECTIVE JUROR: Right. Got it. Yes.

13 THE COURT: Are we clear now? Okay. Very well.

14 Now, the flip side of that, which I assume the answer
10:39:58 15 will be, if in fact the plaintiffs meet their burden of
16 proof, they tip the scales in their favor, they have
17 proven their allegations by a preponderance of the
18 evidence, can all of you agree that you will be able to
19 return a verdict for the plaintiffs? If so, raise your
10:40:19 20 hand.

21 PROSPECTIVE JUROR: (All hands.)

22 THE COURT: I see all hands on my left raised.
23 To my right, the flip side of the question I have just
24 gone through, if the plaintiffs meet their burden of
10:40:34 25 proof, meaning they establish their allegations by a

1 preponderance of the evidence, can all of you commit to
2 returning a verdict for the plaintiffs? If so, please
3 raise your hand.

4 PROSPECTIVE JUROR: (All hands.)

10:40:52 5 THE COURT: I see all hands. All right.

6 Sir, are you an observer?

7 PROSPECTIVE JUROR: Yes, Your Honor.

8 THE COURT: Come forward and have a seat over
9 here, please. I don't want to confuse myself or the
10 lawyers.

11 UNIDENTIFIED SPEAKER: No problem.

12 THE COURT: Thank you. Very well.

13 Now we come to another part. I have taken an oath as
14 a judge to uphold the law, even laws with which I may
15 personally disagree. This is a country of laws, not of
16 men and women who are in power who can impose their
17 personal views on us. We have a law. You follow the law.
18 I don't get to change the law because I don't like it.

19 You have taken an oath to follow the law. This case
20 involves a subject matter that some people may not like,
21 exotic dancers who are complaining that they were not paid
22 properly. Someone may object to either their profession
23 or the fact that they're suing for what they believe to be
24 their just wage.

10:42:05 25 I am going to provide you with instructions and law on

1 these issues such that you can properly consider the
2 evidence as it is presented to you.

3 I need a commitment that you can follow the law even
4 though you may have a distaste for the profession of the
10:42:23 5 plaintiffs or you may have a distaste that someone is
6 suing over their wages, whatever the case may be, or that
7 there are individuals on one side and a corporate
8 defendant on another. None of that matters. What matters
9 is your ability to follow the law and apply it as I give
10:42:46 10 it to you.

11 So having provided you with that explanation, on my
12 left, can all of you commit to following the law as I've
13 provide it to you, now having heard what this case is
14 about? If you can follow the law based upon what you have
10:43:04 15 heard thus far, please so indicate by raising your hand.

16 PROSPECTIVE JURORS: (Several raised hands.)

17 THE COURT: Okay. Juror Number 21, you did not
18 raise your hand. Do you have an issue that you need to
19 apprise me of?

10:43:19 20 PROSPECTIVE JUROR: Well, I personally don't have
21 respect for either side of this at all, simply by the fact
22 that I don't believe and condone someone who would have a
23 business like this or someone who would work in a business
24 like this.

10:43:33 25 THE COURT: Okay. Fair enough. And that's --

1 first of all, I appreciate your honesty because that's
2 very important to both sides. So thank you.

3 Now, with your beliefs, do you believe that you could
4 set them aside and then at that point follow the law and
5 fairly and impartially hear the case?

6 PROSPECTIVE JUROR: I don't believe so, no.

7 THE COURT: Thank you, sir.

8 Anyone else to my left?

9 PROSPECTIVE JURORS: (No response.)

10 THE COURT: And again, I appreciate Juror
11 Number 21's honesty. That's exactly what you took an oath
12 to do. He is doing exactly what he swore that he would
13 do.

14 So does anyone else on my left have similar feelings?

15 PROSPECTIVE JURORS: (No response.)

16 THE COURT: I see no additional hands. Oh, Juror
17 Number 20, yes, sir.

18 PROSPECTIVE JUROR: I agree with what he said. I
19 find all of it distasteful as well.

20 THE COURT: I appreciate that. And so as
21 distasteful as it may be, we're not -- I'm not here to
22 judge that. I'm here to provide a forum that's fair and
23 impartial for the enforcement of a federal law regarding
24 overtime wages, if any, that are due to the plaintiffs.
25 Just because of the nature of their work, that does not

1 make the law go away.

2 So you would be sitting over here listening to the
3 evidence in this case, and you would have to fairly and
4 impartially do so. Ultimately, you may have to decide
5 whether or not you are going to decide for the plaintiffs
6 or whether or not they didn't meet their burden and thus
7 find for the defendant.

8 So on the one hand, you would be finding that exotic
9 dancers are due overtime wages or you would be finding
10 that the owner of the club where they danced would be
11 entitled to a verdict in its favor. Being placed in that
12 position, do you believe that you could be fair and
13 impartial?

14 PROSPECTIVE JUROR: I just -- I am just kind
15 of -- I feel closed-minded about the whole thing.

16 THE COURT: Say no more. I understand, and
17 that's what I needed to hear. Now, again, both gentlemen,
18 I appreciate your honesty. It's very important that you
19 do exactly what you did.

20 Anyone else to my left with similarly-held beliefs?

21 PROSPECTIVE JURORS: (No response.)

22 THE COURT: I see no additional hands. Thank
23 you, gentlemen.

24 Now, turning to my right, you have heard Juror Numbers
25 20 and 21 express beliefs regarding the subject matter of

1 this case, which I inquired about. This is important.
2 Because what the plaintiffs expect and what the defense
3 expects is for fair and impartial people to listen to the
4 facts and reach a result based upon that.

10:46:40 5 Based upon the subject matter of the case and when I
6 provide you the law of the case, will you be able to
7 follow the law setting aside the subject matter of the
8 case? Meaning, the fact that there are exotic dancers on
9 one side and the establishment where they dance on the
10 other, will you -- so my question is: Will you be able to
11 follow the law? If so, please indicate by raising your
12 hand.

13 PROSPECTIVE JURORS: (Several hands raised.)

14 THE COURT: I see all hands raised. Thank you.

10:47:14 15 Now, just as a --

16 MR. WALLACE: Your Honor, there was one that did
17 not.

18 THE COURT: I'm sorry. I was going to do part
19 two anyway, which is we heard Juror Numbers 20 and 21
20 express some beliefs about the subject matter.

21 I missed a hand that was not raised. That was Juror
22 Number 24. So Juror Number 24, in regards to being able
23 to follow the law, you don't think you would be able to
24 follow the law?

10:47:37 25 PROSPECTIVE JUROR: I'm not sure about if I

1 understood what you said about the law. This is what I
2 understood. Someone is not an employee, they don't have
3 to be paid even minimum wage?

4 THE COURT: Someone who is an independent
10:47:51 5 contractor would not be subject to the requirements of the
6 Fair Labor Standards Act, which provides overtime wages.
7 So one of the questions in this case will be whether or
8 not the plaintiffs were employees of the club or were they
9 independent contractors of the club.

10:48:12 10 If they were employees, the Fair Labor Standards Act
11 will apply to them. If they were independent contractors
12 at the club, then it does not apply to them.

13 Do you follow that?

14 PROSPECTIVE JUROR: I follow that.

10:48:28 15 THE COURT: Okay. There will be an explanation
16 as to how you make that determination. That will be part
17 of the law that I provide to you. But the question
18 underpinning all of this is, once I provide that law to
19 you and how you make that determination, whether or not
20 you are going to be able to look at the law and then,
21 based upon the evidence, make a fair and impartial
22 decision or, like Juror Numbers 20 and 21, and I'm using
23 words that they didn't use, but you felt that the
24 plaintiffs' work is so distasteful or you found that the
25 running of this business is so distasteful that you would

1 just be offended and you couldn't follow the law.

2 PROSPECTIVE JUROR: I just -- I just cannot
3 believe that law exists. I mean it's -- I mean --

4 THE COURT: It is part of my job. I can assure
5 you it does.

6 PROSPECTIVE JUROR: Well, you know, that is the
7 first time I have heard it.

8 THE COURT: So that's the question. And that's a
9 real point because people walk into this building as
10 potential jurors all the time. And then, myself or one of
11 my colleagues instructs them, hey, this is what the law
12 says. And people are, I'm shocked that the law says that,
13 but that's the law.

14 And the question is: If I tell you what the law is,
15 whether or not you are shocked by it or not, can you
16 commit to following the law? That's the question. Can
17 you?

18 PROSPECTIVE JUROR: I mean, I would like to say
19 yes, but I'm still shocked.

20 THE COURT: Okay. And you are Juror Number 24.
21 Thank you, sir.

22 All right. Now this kind of goes back to perhaps the
23 subject matter of the case and lawsuits in general. So
24 it's going to be a couple of questions or several
25 questions.

1 Is anyone a member of an organization that has taken a
2 strong position on lawsuit reform? And the reason that
3 that is important, this is a lawsuit seeking money
4 damages. There are organizations out there, both pro and
5 con, that have taken positions on lawsuit reform or
6 lawsuits that seek money damages. Is anyone on my left a
7 member of such an organization that has taken a strong
8 position on civil lawsuits that seek money damages?
9 Anyone on my left? If so, raise your hand.

10:51:41 10 PROSPECTIVE JURORS: (No response.)

11 THE COURT: No hands. To my right? You have
12 heard my explanation about organizations that have taken
13 positions both pro and con on civil lawsuits that seek
14 money damages. Is anyone on my right a member of such an
15 organization? If so, please raise your hand. I see no
16 hands. Thank you.

17 One of the questions, as you already know, is whether
18 or not these plaintiffs were employees of this business.
19 Is there anyone who is a member of an organization, such
20 as a union, which has taken a position on whether or not
21 someone who works at a business is an employee or an
22 independent contractor? If so, please raise your hand.
23 Anyone on my left?

24 PROSPECTIVE JUROR: (Raised hand.)

10:52:46 25 THE COURT: Juror Number 21.

1 PROSPECTIVE JUROR: Possibly. It's not a union,
2 but it is a teachers' federation.

3 THE COURT: A teachers' federation?

4 PROSPECTIVE JUROR: Yes, sir.

10:52:55 5 THE COURT: Okay. So to your knowledge -- well,
6 what is the name of the teacher organization?

7 PROSPECTIVE JUROR: ATPE.

8 THE COURT: ATPE?

9 PROSPECTIVE JUROR: Yes, sir.

10:53:04 10 THE COURT: To your knowledge, has ATPE taken a
11 position on this question?

12 PROSPECTIVE JUROR: To my knowledge, no.

13 THE COURT: To your knowledge. That's what I'm
14 more concerned with. Very well. Thank you, sir.

10:53:17 15 Anyone else on my left?

16 PROSPECTIVE JURORS: (No response.)

17 THE COURT: Very well. To my right, is anyone a
18 member of an organization, such as a union or a trade
19 organization, that has taken a position on the question of
20 whether or not someone who works at a business is an
21 employee or an independent contractor? If so, raise your
22 hand to my right.

23 PROSPECTIVE JUROR: (Raised hand.)

24 THE COURT: Juror Number 23.

10:53:44 25 PROSPECTIVE JUROR: I'm also a member of ATPE,

1 and to my knowledge, no, they have not done anything like
2 that. But I am a member.

3 THE COURT: Very well. Juror Number 24.

4 PROSPECTIVE JUROR: I'm also a member of ATPE.
10:53:56 5 As far as I know, they haven't said anything.

6 THE COURT: What does that stand for again?

7 PROSPECTIVE JUROR: American Teachers --
8 PROSPECTIVE JUROR: -- Association of
9 Professional --

10:54:06 10 PROSPECTIVE JUROR: -- Professional Educators.

11 THE COURT: Very well. Thank you. I feel bad.
12 I should have known that. My mom was a teacher.

13 Very well. Anyone else on my right a member of such
14 an organization? If so, please raise your hand.

10:54:24 15 PROSPECTIVE JURORS: (No response.)

16 THE COURT: Very well. Thank you.

17 Now, this kind of goes more to the subject matter of
18 the case, and Juror Numbers 20 and 21 have kind of given
19 me kind of their beliefs on the subject matter.

10:54:55 20 Is there an organization, be it a church, temple,
21 synagogue, a personal belief that you hold that you think
22 would impair your ability to be fair and impartial based
23 upon the fact that we're talking about exotic dancers
24 dancing at a gentleman's club? Is there any organization
25 or belief that you have that would impact your ability to

1 be fair and impartial in this business dispute between the
2 two of them?

3 If so, on my left, raise your hand.

4 PROSPECTIVE JUROR: (Raised hand.)

10:55:34 5 THE COURT: That's Juror Number 15?

6 PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: Yes, ma'am. Could you --

8 PROSPECTIVE JUROR: I'm a Catholic.

9 THE COURT: You are a Catholic?

10:55:46 10 PROSPECTIVE JUROR: Yeah.

11 THE COURT: As a result of being a Catholic, do
12 you believe that the subject matter of this case would
13 impair your ability to be fair and impartial to both
14 sides?

15 PROSPECTIVE JUROR: Probably.

16 THE COURT: I'll talk with you about that. Thank
17 you. Thank you, ma'am.

18 Anyone else on my left?

19 PROSPECTIVE JURORS: (No response.)

10:56:07 20 THE COURT: I see no additional hands.

21 Turning to my right, is anyone to my right a member of
22 a church, synagogue, temple or another organization or
23 have another affiliation or have a closely-held belief
24 that would prevent you from being fair and impartial in
25 this case which involves exotic dancers dancing at a

1 gentleman's club and engaged in this business dispute
2 about wages that just the subject matter alone, based upon
3 your closely-held beliefs, would prevent you from being
4 fair and impartial? If so, please raise your hand.

10:56:55 5 PROSPECTIVE JURORS: (Several hands.)

6 THE COURT: Juror Number 22.

7 PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: Okay. And what is it that you want
9 to tell me about?

10:57:04 10 PROSPECTIVE JUROR: I'm a Buddhist.

11 THE COURT: You are what?

12 PROSPECTIVE JUROR: Buddhist. I went to Catholic
13 school. I think I have a problem with it.

14 THE COURT: Well, as a result of your religious
15 preference and your prior education --

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: -- when you hear the plaintiffs come
18 to the stand and testify about what they do for a living
19 and when you hear the defense talk about the type of
20 business that he runs, would that prevent you from then
21 listening and being fair and impartial in this case, you
22 believe?

23 PROSPECTIVE JUROR: I'm not so sure about that.

24 THE COURT: Okay. I'll talk with you a little
25 later. I saw another hand, Juror Number 24. I'm going to

1 talk with you a little later as well, too.

2 Anyone else on my right?

3 PROSPECTIVE JURORS: (No response.)

4 THE COURT: I see no additional hands. Thank
5 you.

6 Another side of the coin that I just raised. As you
7 know, the defendant is a corporation doing business as.
8 So on one side we have individuals. On this side we have
9 a corporation.

10 Does the fact that this is individual versus
11 corporation give anyone pause such that they could not be
12 fair and impartial? So on my left, that scenario alone,
13 individuals versus a corporation, does that give anyone
14 pause as to their ability to be fair and impartial? If
15 so, please raise your hand on my left. I see no hands.

16 Turning to my right, stripping away everything else --
17 bad choice of words. Taking everything else away,
18 plaintiffs are individuals. The defense is a corporation.
19 That fact alone, does that give anyone pause as to their
20 ability to be fair and impartial in the case? If so,
21 please raise your hand on my right. I see no hands.
22 Thank you.

23 On my left -- this is kind of a multi-tiered question
24 and you can respond to any portion of it. Has anyone on
25 my left been involved in a wage dispute, your spouse or

1 family member been involved in a wage dispute, or a close
2 friend or associate been involved in a wage dispute that
3 you discussed with them?

4 So on my left, has anyone personally or someone close
11:00:05 5 to you been involved in a wage dispute in any shape, form,
6 or fashion on my left? If so, please raise your hand.

7 PROSPECTIVE JUROR: (Raised hand.)

8 THE COURT: Juror Number 19, yes, sir.

9 PROSPECTIVE JUROR: By wage dispute, are you
11:00:17 10 saying that -- like how much they make or --

11 THE COURT: Any way. The amount that they make,
12 whether or not they were properly paid, be it commissions,
13 wages, bonus, whatever the case may be. So has anyone
14 personally or someone close to you been involved in a wage
11:00:41 15 dispute?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Okay. Who was it?

18 PROSPECTIVE JUROR: Me. I'm self-employed.

19 THE COURT: Self-employed. So you were hiring
11:00:47 20 yourself out, and you had a dispute with the client?

21 PROSPECTIVE JUROR: Well, no. We had a dispute
22 against us.

23 THE COURT: Okay. Could you explain the details,
24 sir.

11:00:56 25 PROSPECTIVE JUROR: Well, we had a contractor

1 working for us that decided that -- we decided to part
2 ways, and he filed for unemployment against us. And we
3 ended up having to go and take that to -- well, we never
4 went to court, but we had to take it toward the employment
5 commission.

6 THE COURT: Very well. As a result of having
7 been -- were you the owner of the company that was --

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Okay. You were the owner of the
10 company that the contractor filed against; is that
11 correct?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Okay. As a result of having been
14 involved in that dispute, do you have any preconceived
15 notions about the case as I have described it thus far?

16 PROSPECTIVE JUROR: No, sir.

17 THE COURT: Very well. Does that impact your
18 ability to be fair and impartial in this case?

19 PROSPECTIVE JUROR: No, sir.

20 THE COURT: Thank you, sir.

21 Anyone else to my left? You've personally been
22 involved in a wage dispute or someone close to you.

23 PROSPECTIVE JURORS: (No response.)

24 THE COURT: I see no additional hands.

25 Turning to my right, have you personally or someone

1 close to you been involved in a wage dispute? If so,
2 please raise your hand.

3 PROSPECTIVE JUROR: (Raised hand.)

4 THE COURT: Juror Number 33, yes, ma'am.

11:02:16 5 PROSPECTIVE JUROR: I have been.

6 THE COURT: Personally?

7 PROSPECTIVE JUROR: Personally.

8 THE COURT: Could you briefly give me the
9 details?

11:02:22 10 PROSPECTIVE JUROR: I worked for a company that
11 did not pay us the overtime, and we ended up suing the
12 company.

13 THE COURT: Okay. So you have been involved in a
14 lawsuit similar to this?

11:02:32 15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Okay. And as a result of having
17 previously sued a company for wages, overtime wages, as
18 you have said, does that create in you any bias or
19 prejudice, based upon what you have heard thus far?

11:02:48 20 PROSPECTIVE JUROR: No.

21 THE COURT: Okay. As a result of having been
22 previously engaged in a dispute, as you have described it,
23 over wages/overtime, do you believe that you could hear
24 the facts of this case and be fair and impartial?

11:03:02 25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Very well. Thank you.

2 Anyone else? Juror Number 36.

3 PROSPECTIVE JUROR: (Raised hand.)

4 THE COURT: Yes.

11:03:13 5 PROSPECTIVE JUROR: My mother was involved in a
6 case against Dow Chemical because she thought she was
7 underpaid.

8 THE COURT: Okay. In general or because she was
9 a female or what?

11:03:25 10 PROSPECTIVE JUROR: I think because she was a
11 female.

12 THE COURT: Okay. So a discrimination-type suit;
13 is that correct?

14 PROSPECTIVE JUROR: Yes.

11:03:32 15 THE COURT: Okay. So as a result of your mother
16 having been engaged in a dispute against her employer for
17 wages, does that create in you any bias or prejudice such
18 that you could not be fair and impartial in this case?

19 PROSPECTIVE JUROR: No.

11:03:50 20 THE COURT: Okay. Thank you, sir.

21 Before becoming a judge, I did what these lawyers do
22 and I frequently got to ask questions of the panel and I
23 would ask questions like I have asked thus far to try to
24 determine if everyone could be fair and impartial and I
11:04:26 25 would think that I had asked all the questions that would

1 give me the information to properly determine whether or
2 not someone could be fair and impartial, and sometimes I
3 had a big gaping blind spot because you are doing exactly
4 what I asked you to do. You are answering questions. You
11:04:47 5 are not volunteering information. And there may be
6 something that I have said thus far that you are thinking
7 in your mind that if the judge asks me this question
8 specifically, I'm going to tell him this; but I haven't
9 asked the right question.

11:05:04 10 So this is my catchall question. Based upon what I
11 have described about the case thus far, what you have
12 heard, is there anything that you believe that you need to
13 inform me of regarding your ability to be fair and
14 impartial in this case, be it the subject matter of the
11:05:32 15 case, the lawyers that you have met thus far, anything,
16 and I just haven't asked the right question that would
17 trigger you to raise your hand and tell me something that
18 I ought to know? Anyone on my left?

19 PROSPECTIVE JURORS: (Several hands.)

11:05:49 20 THE COURT: Okay. Perfect. Juror Number 27?

21 PROSPECTIVE JUROR: I think that I would have a
22 biased towards just assuming that somebody is an employee
23 and then, therefore, they should have overtime wages. I
24 don't really like the idea that somebody isn't paid what
11:06:10 25 they should be paid. I think I would have a bias in

1 general about that.

2 THE COURT: So if -- well, let me ask you this:
3 If it is established that through facts in evidence that
4 the plaintiffs were, in fact, employees and they put on
5 proof of damages that is credible to you, as a result of
6 this bias, as you have called it, would you award them
7 more than what they are asking for or treat them special
8 as a result of the fact that they have been able to
9 establish that they are employees?

11:06:30 10 PROSPECTIVE JUROR: I don't think that I would
11 award more than what they have established, no.

12 THE COURT: Okay. Part two. Remember I said for
13 the preponderance of the evidence they start out equal.
14 And so if the facts come out, the evidence comes out and
15 it remains equal, meaning that the plaintiffs have not met
16 their burden of proof, have not done the preponderance of
17 the evidence but you have a biased because you believe
18 that employees should be properly paid, would you change,
19 in your mind, the presentation of the evidence such that
11:07:12 20 the plaintiffs would, in fact, meet their burden just
21 because you have a biased in favor of employees being
22 properly paid?

23 PROSPECTIVE JUROR: I might. I'm not sure but --
24 I'm not sure.

11:07:46 25 THE COURT: Thank you. Anyone else to my left?

1 PROSPECTIVE JUROR: (Raised hand.)

2 THE COURT: Juror Number 20. Yes, sir.

3 PROSPECTIVE JUROR: I have an opinion that this
4 is a frivolous lawsuit.

11:07:54 5 THE COURT: Okay. I'm going to speak with you a
6 little bit later about that. Thank you.

7 Anyone else to my left?

8 PROSPECTIVE JURORS: (No response.)

9 THE COURT: No. No additional hands.

11:08:04 10 So to my right, you have heard me explain that
11 sometimes I think I have all the questions asked but I
12 didn't ask the right one for you. And a perfect example
13 was Juror Number 27, I believe, over in the corner who
14 mentioned about a biased -- a potential bias towards
15 employees.

16 So my question to you is: Is there something that I
17 did not ask that would have triggered you to raise your
18 hand to tell me something that I need to know, either
19 involving the subject matter of the case, the parties to
11:08:33 20 the case, or anything that you have heard thus far? If
21 so, please raise your hand.

22 PROSPECTIVE JURORS: (No response.)

23 THE COURT: I see no hands. Thank you.

24 Now, one other deal, and you don't have to mention
11:08:53 25 this now. I had mentioned that we're going to be in trial

1 through close of business on Thursday. Trial days are
2 9:00 to 5:00. And so, if there is a conflict that I need
3 to know about, I'll tell you a little bit more about that
4 later. I'll give you the opportunity to talk about that.

11:09:13 5 I'm not going to foreclose you from talking about that.
6 But know that that is going to come a little bit later.
7 So I'll explain the details surrounding that.

8 So what I am going to do at this time, I have given
9 the lawyers a limited amount of time to talk with you
11:09:32 10 about this case and they are going to ask certain
11 questions that perhaps I asked but as a follow-up to more
12 specific jurors or subject matters that they want to
13 cover.

14 They are not going to argue their case. They are not
15 going to present any evidence in this case. They are
16 simply trying to determine who could be the best fair and
17 impartial jurors or who shouldn't be on the jury because
18 of their bias or prejudice which exists. So it will be
19 short for each side.

11:10:09 20 So with that being said, does plaintiffs' counsel wish
21 to voir dire the panel at this time?

22 MR. BERLANGA: Yes, Your Honor.

23 THE COURT: You may proceed, sir.

24 MR. BERLANGA: Good morning, ladies and
11:10:17 25 gentlemen.

1 PROSPECTIVE JURORS: Good morning.

2 MR. BERLANGA: I'm going to be walking between
3 the sides because the courtroom isn't ideally set up to
4 address you all at the same time. If I'm on one side and
5 somebody can't hear me, would you please let me know. Is
6 that fair?

7 PROSPECTIVE JURORS: Yes.

8 MR. BERLANGA: There are very few opportunities
9 in a trial that I get to address you directly. I want to
11:10:26 10 introduce myself. As I said, my name is Warren Berlanga.
11 I'm from Houston. I was born here. I was raised here. I
12 did all my school here. I haven't really found a reason
13 to leave yet. I enjoy hanging out with my wife. I was
14 married a little over a year ago. If my mother-in-law and
11:10:54 15 my mother have their way, I'm going to have a new addition
16 to the family soon. So I just wanted to give you a little
17 background on me. I don't have much time. So it's got to
18 be brief.

19 Now, I know that there are some engineers in the
11:11:08 20 crowd.

21 PROSPECTIVE JURORS: (Several hands raised.)

22 MR. BERLANGA: I see some hands. All right. You
23 are juror number?

24 PROSPECTIVE JUROR: 29.

11:11:14 25 MR. BERLANGA: Guys, I can't see your numbers.

1 My eyes are bad. My wife has been on me about that and
2 getting glasses. I'm going to ask you for the numbers. I
3 see hands.

4 This is a question generally for engineers. It's been
11:11:26 5 my experience that engineers generally like things to be
6 precise, right? You like calculations. You want things
7 to be exact.

8 The reason I ask this question is because the burden
9 of proof in this case, the preponderance of the evidence,
11:11:37 10 the scales, that's more of a concept, right? That's not a
11 calculation. That's not -- that's not math that you can
12 do.

13 Now, are there any engineers in the crowd that are
14 going to have a problem applying the burden of proof, the
11:11:51 15 tipping of the scales, because of the work they do?

16 Anybody going to want things exact and precise? Because
17 you are not going to get the exact or precise measurements
18 in the case.

19 PROSPECTIVE JUROR: To make a decision there has
11:12:04 20 to be -- I mean, it has to be laid out. You have to have
21 the law. But to be able to make the decision, you have to
22 have a clear-cut criteria to -- it's not just really I
23 feel this way. That's not the way to do it.

24 MR. BERLANGA: I appreciate that. That's not
11:12:20 25 what is going to happen here. You are going to get the

1 criteria. It's just a little more ethereal than engineers
2 seem to want in their work.

3 Are you going to be able to apply the concept of that
4 burden of proof, given your work? Anybody feel like they
5 are going to have a problem with this, any engineer?

6 PROSPECTIVE JUROR: (Raised hand.)

7 MR. BERLANGA: Juror Number 8.

8 THE COURT: Yes.

9 PROSPECTIVE JUROR: I run a data analytics team
10 for 16 people. It is fairly specific. I can't say for
11 certain, but I just want to bring it up to you.

12 MR. BERLANGA: Thank you very much. Anybody over
13 here?

14 PROSPECTIVE JURORS: (No response.)

15 MR. BERLANGA: Okay. Anybody have employees on
16 your payroll? Anybody in business with employees on a
17 payroll?

18 PROSPECTIVE JUROR: (Raised hand.)

19 MR. BERLANGA: You are juror number?

20 PROSPECTIVE JUROR: Juror Number 28.

21 MR. BERLANGA: Do I see any hands on the left
22 side?

23 PROSPECTIVE JUROR: (Several hands raised.)

24 MR. BERLANGA: Yes, sir. You are Juror
25 Number 17.

1 PROSPECTIVE JUROR: Number 17.

2 MR. BERLANGA: Juror Number 8.

3 PROSPECTIVE JUROR: Yeah. I have employees and
4 some contractors that work in my group.

11:13:19 5 MR. BERLANGA: And, ma'am, you are juror number?

6 PROSPECTIVE JUROR: I am Juror 12. I'm a human
7 resources manager.

8 MR. BERLANGA: How many employees do you manage?

9 PROSPECTIVE JUROR: About 650.

11:13:30 10 MR. BERLANGA: 650 employees?

11 PROSPECTIVE JUROR: Yes. We have eight different
12 states.

13 MR. BERLANGA: Quite a few. These employees, do
14 you pay them a wage?

11:13:37 15 PROSPECTIVE JUROR: Yes.

16 MR. BERLANGA: Do you consider any of those
17 employees on your -- do you consider anybody on -- let me
18 just scratch that question. Do you ever work with
19 independent contractors?

11:13:47 20 PROSPECTIVE JUROR: No.

21 PROSPECTIVE JUROR: Sir.

22 MR. BERLANGA: Yes, sir.

23 PROSPECTIVE JUROR: I am Juror Number 10. I work
24 with independent contractors in my business.

11:13:54 25 MR. BERLANGA: You work with independent

1 contractors in your business?

2 PROSPECTIVE JUROR: Yes.

3 MR. BERLANGA: What kind of business do you do?

4 PROSPECTIVE JUROR: Construction.

11:14:01 5 PROSPECTIVE JUROR: I guess I have two
6 contractors that work for me.

7 MR. BERLANGA: Juror Number 8. Okay. Is there
8 anybody else over here who raised their hand?

9 PROSPECTIVE JUROR: (Raised hand.)

11:14:13 10 MR. BERLANGA: Juror Number 19. Anybody else?
11 I'm sorry. My eyes.

12 PROSPECTIVE JUROR: 28.

13 MR. BERLANGA: Number 28.

14 I know there are some teachers in the crowd. I heard
15 a lot about the teachers. I want to ask the teachers a
16 question. Are the teachers employed by the school
17 district?

18 PROSPECTIVE JUROR: Yes.

19 MR. BERLANGA: Let's raise the hands of the
11:14:35 20 teachers in the audience.

21 PROSPECTIVE JURORS: (Several hands.)

22 PROSPECTIVE JUROR: I'm employed by the district.
23 I'm Number 23. I'm paid out of the Title 1 federal funds.

24 MR. BERLANGA: Okay. That's Juror Number 23.

11:14:45 25 PROSPECTIVE JUROR: I'm employed by the district.

1 MR. BERLANGA: Anybody over here?

2 PROSPECTIVE JUROR: I work at a community
3 college.

4 MR. BERLANGA: Okay. And what community college
11:14:54 5 is that?

6 PROSPECTIVE JUROR: Houston Community College.

7 MR. BERLANGA: You are Juror Number 14?

8 PROSPECTIVE JUROR: Yes.

9 MR. BERLANGA: Now, does the school district pay
11:15:04 10 the teachers?

11 PROSPECTIVE JUROR: The community college pays
12 us.

13 THE COURT: Speak up, sir.

14 PROSPECTIVE JUROR: The community college pays
11:15:10 15 us. We are paid through the community college. I do not
16 work with a school district. I work for the community
17 college.

18 MR. BERLANGA: So you -- the community college
19 pays you for your work as a teacher?

11:15:19 20 PROSPECTIVE JUROR: Yes, sir.

21 MR. BERLANGA: Thank you very much.

22 PROSPECTIVE JUROR: You are welcome.

23 MR. BERLANGA: Did I see any teachers over here?

24 PROSPECTIVE JUROR: Yes, sir. I get paid by the
11:15:27 25 school district.

1 MR. BERLANGA: The school district. Thank you.

2 Did anybody here ever research how to get out of jury
3 duty before coming here today? I have got to ask.

4 PROSPECTIVE JURORS: (Laughter.)

11:15:46 5 MR. BERLANGA: I ask that question only because
6 we are here to get people that just want to look at the
7 facts and we need the right jury to decide the dispute.
8 That's why I asked that question. If somebody doesn't
9 want to be here, they are probably not the right juror for
11:16:00 10 this job.

11 Now, let's see. A couple of questions here. The
12 judge, he did a pretty good job of explaining the burden
13 of proof, the preponderance of the evidence. The scale
14 just has to be tipped ever so slightly in favor of the
11:16:24 15 evidentiary questions that are going to be asked.

16 I have heard other judges give a football analogy, for
17 those that like football. So I'll give a football
18 analogy. The ball just has to be moved past the 50-yard
19 line ever so slightly.

11:16:38 20 Does anybody -- does anybody -- does anybody still
21 have an issue with the burden of proof, applying the
22 burden of proof, the preponderance of the evidence?
23 Anybody have any questions about it?

24 PROSPECTIVE JUROR: I do. So how do you know you
11:16:54 25 get past the 50 percent mark?

1 THE COURT: That's Juror Number 9.

2 MR. BERLANGA: Juror Number 9. Well, that's for
3 the jurors to determine.

4 PROSPECTIVE JUROR: Based off of?

11:17:04 5 MR. BERLANGA: The evidence that's going to be
6 presented at the trial by both sides. You are going to
7 look at the evidence, and you are going to weigh it.

8 PROSPECTIVE JUROR: Against? What are you going
9 to weigh that evidence against?

11:17:16 10 THE COURT: Well, let me give you kind of another
11 example. Are you a father?

12 MR. BERLANGA: No.

13 THE COURT: Okay. Your son, if you had a son,
14 you walk into a room and there is something spilled on the
15 floor and you call your son in and you inquire as to
16 whether or not he did it. You make a determination, based
17 upon what he is telling you where he was at when this
18 happened, either you believe him or you don't, right?

19 So that's the same scenario in that a witness will
20 come to the stand. They will tell you something. And you
21 are going to make an evaluation as to whether or not you
22 believe them or not, based upon the circumstances and
23 the -- that they have presented to you by other evidence.

24 So you'll have the opportunity to make that
25 evaluation, yes, that's a preponderance of the evidence

1 or, no, it's not.

2 PROSPECTIVE JUROR: Okay.

3 MR. BERLANGA: Thank you, Your Honor.

4 Thank you Juror Number 9.

11:18:12 5 THE COURT: Yes.

6 MR. BERLANGA: Anybody in the audience here -- is
7 anybody an independent contractor themselves? And I want
8 to see hands on both sides, please.

9 PROSPECTIVE JURORS: (Several raised hands.)

11:18:21 10 MR. BERLANGA: All right. Juror Number 2, Juror
11 Number 19.

12 PROSPECTIVE JUROR: Do you mean owning your own
13 business or working for the contractor?

14 MR. BERLANGA: Do you own your own business?

11:18:32 15 PROSPECTIVE JUROR: No. Just asking you.

16 MR. BERLANGA: Do you define yourself as an
17 independent contractor?

18 PROSPECTIVE JUROR: Yes. I don't own the
19 company.

11:18:39 20 MR. BERLANGA: Thank you. Juror Number 10, Juror
21 Number 25, and Juror Number --

22 PROSPECTIVE JUROR: 36.

23 MR. BERLANGA: Juror Number 36. Thank you very
24 much.

11:18:47 25 Now, the independent contractors on this side, let me

1 see who raised their hand. I apologize. Sir, Juror
2 Number 2, what do you do, sir?

3 PROSPECTIVE JUROR: Consulting through a
4 contractor. I have an LLC and --

11:19:02 5 MR. BERLANGA: So you have your own business?

6 PROSPECTIVE JUROR: I'm a single employee. Just
7 one employee.

8 MR. BERLANGA: You are a single employee but you
9 are an independent contractor and you are running your own
11:19:11 10 business?

11 PROSPECTIVE JUROR: Yes.

12 MR. BERLANGA: And you established an LLC?

13 PROSPECTIVE JUROR: Yes.

14 MR. BERLANGA: Do you keep business records?

11:19:18 15 PROSPECTIVE JUROR: I file and pay taxes.

16 MR. BERLANGA: Do you do statements of revenue,
17 profit and loss?

18 PROSPECTIVE JUROR: I've been only doing it for
19 six or eight months. I do.

11:19:27 20 MR. BERLANGA: You keep books?

21 PROSPECTIVE JUROR: Yes.

22 MR. BERLANGA: Do you know or do you have any
23 idea what sort of makes an independent contractor as
24 opposed to an employee?

11:19:38 25 PROSPECTIVE JUROR: Vaguely. It seems like --

1 well, one is, you know, whether --

2 THE COURT: Well, just a moment. Just a moment.

3 I don't want to go into a description of the law because
4 that has the potential to not be correct. I understand
5 that you don't know. I don't want it to be misstated.

6 We'll get to that later.

7 PROSPECTIVE JUROR: I can just tell you what I
8 do. That's all I can tell you.

9 THE COURT: Yes.

10 MR. BERLANGA: Thank you for that. Now, are
11 there any jurors in the audience that feel like there is a
12 question that I should have asked that I didn't ask? That
13 is sort of my catchall. I know that Your Honor has a
14 catchall. I have a catchall, too. I'm going to come over
15 on this side. Does anybody on this side feel like they
16 have a question that I should have asked that I didn't
17 ask?

18 PROSPECTIVE JURORS: (No response.)

19 MR. BERLANGA: Now, can I see the hands of people
20 that said that they had an issue with the work of exotic
21 dancing or the ownership of an exotic dancing club? Can I
22 see anybody that had an issue with that?

23 PROSPECTIVE JUROR: (Raised hand.)

24 MR. BERLANGA: Ma'am, you are --

25 PROSPECTIVE JUROR: Juror Number 15.

1 MR. BERLANGA: Your issue with exotic dancing --

2 THE COURT: Counsel, we're going to speak with
3 those jurors privately.

4 MR. BERLANGA: Thank you, Your Honor.

11:21:06 5 I think that may be all I have for you guys. You are
6 lucky. Is there anybody here that is not going to apply
7 the law 100 percent in this case? Other than people that
8 Your Honor is going to talk to later on in private,
9 anybody feel like they can't apply the law that Your Honor
11:21:26 10 gives to you? Anybody feel like they can't do that
11 100 percent because of any reason whatsoever? And anybody
12 that's going to be speaking with the judge in private
13 later on, I don't need you to raise your hands. Just
14 anybody else out there that feels like for any reason they
11:21:40 15 can't apply the law 100 percent in this case?

16 PROSPECTIVE JURORS: (No response.)

17 MR. BERLANGA: Thank you. I know that -- I have
18 seen the intake sheets. And so I know that there are some
19 people out there that have been jurors before. Can I see
11:21:59 20 the hands of people that have been jurors.

21 PROSPECTIVE JURORS: (Several hands.)

22 MR. BERLANGA: Juror Number 4, how was it serving
23 on a jury?

24 PROSPECTIVE JUROR: I served on a criminal jury.
11:22:12 25 It was a little disappointing, I would say.

1 MR. BERLANGA: Why is it disappointing?

2 PROSPECTIVE JUROR: Because we deliberated for
3 three days and could not come to a unified decision.

4 MR. BERLANGA: You say it was disappointing. Was
5 the experience rewarding at all, at the end of the day, to
6 go in and be a part of the process, even though you
7 weren't happy with the result? Was the experience itself
8 rewarding?

9 PROSPECTIVE JUROR: Not based on the end result,
0 no.

11 MR. BERLANGA: And is there anything about that
12 experience that is going to make it hard for you to be
13 fair to the parties in this case?

14 PROSPECTIVE JUROR: No.

15 MR. BERLANGA: Anybody else? Thank you for
16 sharing.

17 Yes, Juror Number 6.

18 PROSPECTIVE JUROR: I served on a criminal jury
19 and I --

20 MR. WALLACE: Judge, I can't hear.

21 THE COURT: Ma'am, could you stand up and let the
22 microphone pick you up a little bit better.

23 PROSPECTIVE JUROR: (Complying.)

24 THE COURT: Thank you.

25 PROSPECTIVE JUROR: I found it interesting and

1 I -- I don't know. I thought that the whole process was
2 interesting.

3 MR. BERLANGA: So you were engaged, it felt good
4 to be part of that process?

11:23:20 5 PROSPECTIVE JUROR: Yes.

6 MR. BERLANGA: Did you say that was a criminal
7 jury?

8 PROSPECTIVE JUROR: It was a DWI case.

9 MR. BERLANGA: A DWI case. Thank you very much
10 for sharing that. I appreciate that.

11 Anybody else over here on this side?

12 PROSPECTIVE JUROR: (Raised hand.)

13 MR. BERLANGA: You are Juror Number 16?

14 PROSPECTIVE JUROR: 16, yes. I have been on a
15 jury for both civil and criminal. I found it very
16 rewarding that I was able to participate.

17 MR. BERLANGA: On both sides?

18 PROSPECTIVE JUROR: Both sides.

19 MR. BERLANGA: On the criminal and the civil?

11:23:45 20 PROSPECTIVE JUROR: Yes.

21 MR. BERLANGA: Thank you very much. I appreciate
22 you sharing, Juror Number 16.

23 Anybody over here ever served on a jury before? Juror
24 Number 10, what kind of case was that?

11:23:56 25 PROSPECTIVE JUROR: Criminal.

1 MR. BERLANGA: What was the charge?

2 PROSPECTIVE JUROR: Domestic violence and
3 stalking.

4 MR. BERLANGA: And did you hear the questions I
11:24:03 5 had for the jurors over there sort of about the
6 experience? Can you tell me about it? How was it? Did
7 you feel good to take part in it?

8 PROSPECTIVE JUROR: It was quick, rapid, got
9 selected, went to trial, wrapped up very quickly.

10 MR. BERLANGA: How long did it last?

11 PROSPECTIVE JUROR: For jury duty, we got picked
12 and went home that day. So, same day.

13 MR. BERLANGA: So that was pretty quick. This
14 might take another day or two. Are you going to have a
11:24:33 15 problem staying engaged if this is a little more lengthy
16 than the other one?

17 PROSPECTIVE JUROR: I don't see a problem, no.

18 MR. BERLANGA: Did you stay pretty engaged in the
19 first one?

20 PROSPECTIVE JUROR: Yes.

21 MR. BERLANGA: Anybody over here?

22 PROSPECTIVE JUROR: (Raised hand.)

23 MR. BERLANGA: Juror Number 11.

24 PROSPECTIVE JUROR: Yes. I served on a jury.

11:24:51 25 MR. BERLANGA: How was your experience? It's

1 okay. You can tell me you didn't like it and you wanted
2 to go home the whole time. I want to hear that.

3 PROSPECTIVE JUROR: I did.

4 THE COURT: Five minutes, Counselor.

11:24:59 5 MR. BERLANGA: Thank you, Your Honor.

6 How long did that last?

7 PROSPECTIVE JUROR: Just a couple of days.

8 MR. BERLANGA: Were you able to stay engaged over
9 that couple of days?

11:25:07 10 PROSPECTIVE JUROR: Yes.

11 MR. BERLANGA: Did you take notes?

12 PROSPECTIVE JUROR: No.

13 MR. BERLANGA: Just wondering. Thank you, Juror
14 Number 11. Someone else?

11:25:14 15 PROSPECTIVE JUROR: It was civil, about three
16 days.

17 MR. BERLANGA: What kind of case was it?

18 PROSPECTIVE JUROR: It was a bus company. It was
19 a bus driver. It was an accident.

11:25:27 20 MR. BERLANGA: And how long did that last?

21 PROSPECTIVE JUROR: It was three days.

22 MR. BERLANGA: A three-day trial. At the end,
23 did you reach a verdict?

24 PROSPECTIVE JUROR: Yes, sir.

11:25:35 25 MR. BERLANGA: At the end of the day, when

1 everything was said and done, did you feel good about your
2 participation?

3 PROSPECTIVE JUROR: Yes, sir.

4 MR. BERLANGA: Did you find the experience
11:25:44 5 interesting?

6 PROSPECTIVE JUROR: And rewarding.

7 MR. BERLANGA: And rewarding. Anyone else on the
8 front row?

9 PROSPECTIVE JUROR: (Raised hand.)

10 MR. BERLANGA: Juror Number 25.

11 PROSPECTIVE JUROR: Yeah. It was a criminal
12 case, but there was a mistrial by the end of the first
13 day.

14 MR. BERLANGA: It didn't last very long?

15 PROSPECTIVE JUROR: No.

16 MR. BERLANGA: Now, the little taste that you got
17 of it, did you feel like you were engaged in the process?

18 PROSPECTIVE JUROR: Yes.

19 MR. BERLANGA: Thank you very much, Juror
11:26:07 20 Number 25. Thank you.

21 Anybody else?

22 PROSPECTIVE JURORS: (No response.)

23 MR. BERLANGA: Let's see. I think I spoke to the
24 folks on the second row. Anybody on the second row here
11:26:16 25 get served to be on a jury?

1 PROSPECTIVE JUROR: (Raised hand.)

2 MR. BERLANGA: Juror Number 17.

3 PROSPECTIVE JUROR: I have been both criminal and
4 civil. It's an interesting experience.

11:26:25 5 MR. BERLANGA: You thought it was rewarding
6 overall?

7 PROSPECTIVE JUROR: Yeah.

8 MR. BERLANGA: It is a very rewarding experience
9 definitely.

11:26:31 10 PROSPECTIVE JUROR: Yeah. I felt like I had done
11 what I should do.

12 MR. BERLANGA: You did your part. Thank you very
13 much, Juror Number 17. I appreciate that.

14 Has anybody else on the second row done this?

11:26:41 15 PROSPECTIVE JUROR: (Raised hand.)

16 MR. BERLANGA: I have spoken to you. Anybody on
17 the back row there?

18 PROSPECTIVE JUROR: (Raised hand.)

19 MR. BERLANGA: Juror Number 28.

11:26:47 20 PROSPECTIVE JUROR: I was on a civil case.

21 MR. BERLANGA: How did you feel about that
22 experience?

23 PROSPECTIVE JUROR: Indifferent.

24 MR. BERLANGA: Thank you, Juror Number 28.

11:26:55 25 Again, guys, this is the last time or one of the last

1 times I get to address you directly. I just want to thank
2 you for staying involved and paying attention. I look
3 forward to presenting my case to you, along with my
4 colleagues here, and it was a pleasure meeting you. Those
11:27:12 5 of you that don't actually end up on the jury, I want to
6 thank you for being here and doing your part because, like
7 Your Honor said, your participation makes the system work,
8 and I really want to thank you for that. Thank you.

9 THE COURT: Thank you, Counselor.

10 11:27:34 Does counsel for the defense wish to voir dire the
11 panel at this time?

12 MR. WALLACE: Yes, Your Honor.

13 THE COURT: You may proceed.

14 11:27:41 MR. WALLACE: My name is Casey Wallace. I
15 introduced myself to you a few minutes ago. Like
16 Mr. Berlanga, I am a native Houstonian. I have practiced
17 my entire life in the city of Houston. The first trial I
18 ever tried as a young lawyer was in this courtroom when
19 Judge Rosenthal had this courtroom. It was that long ago.
20 11:27:58 So it's fun to be back in this courtroom. I look forward
21 to working through the law and working through the facts
22 with all of you, but I do want to drill down on a few
23 questions that Judge Bennett asked you on some of the
24 topics.

25 11:28:11 A couple of jurors or a couple of the panel members

1 said that they had a little hesitancy or a little trouble
2 with the idea of someone not being an employee. This is a
3 case about classification of independent contractors or
4 employees. There is lots of independent contractors in
11:28:34 5 the country: insurance agents, contractors, welders,
6 consultants, nurses that go from hospital to hospital,
7 beauticians and barbers who rent chairs and cut hair. Not
8 everybody is an employee.

9 Does anybody have a problem with the fact that some
11:28:52 10 people in this country are not classified as employees,
11 don't make minimum wage, and earn their income in a
12 different kind of fashion than what you would typically be
13 accustomed to hearing?

14 PROSPECTIVE JUROR: (Raised hand.)

11:29:07 15 MR. WALLACE: Yes, ma'am. Juror Number 27.

16 PROSPECTIVE JUROR: Number 27. I very much
17 dislike that system. So I have a big bias for it.

18 MR. WALLACE: You have a bias that everyone
19 should be classified as an employee?

11:29:21 20 PROSPECTIVE JUROR: Or paid minimum wage with
21 overtime and that kind of stuff, yeah.

22 MR. WALLACE: Thank you for your candor. That's
23 what we're looking for is candor. There is nothing at all
24 wrong with the way you feel.

11:29:33 25 Does anybody else feel the same way that Juror

1 Number 27 feels, that everyone should be classified as an
2 employee and make minimum wage and be subject to overtime
3 strictures and all that?

4 PROSPECTIVE JURORS: (No response.)

11:29:48 5 MR. WALLACE: By a raising of hands, can I find
6 those people who are comfortable with the fact that there
7 are independent contractors who contract out their labor
8 and their services to make money in that fashion?

9 PROSPECTIVE JURORS: (Several hands.)

11:30:02 10 MR. WALLACE: Okay. Thank you. I want to talk a
11 little bit about bias and prejudice. Those terms have
12 been used a lot in this courtroom. During this panel, I'm
13 going to use it a lot, too. No one likes to be accused of
14 being biased or prejudiced. Every day we hear these terms
11:30:25 15 that so-and-so is prejudiced against a foreigner or
16 somebody is biased against somebody because they are short
17 or somebody has a problem with someone's skin or religion.
18 That's not the kind of bias and prejudice we're talking
19 about. Okay. Not at all.

11:30:40 20 I'm going to use my brother as a prime example. He is
21 one of the finest men I know. But he is biased and
22 prejudiced against police officers. Why? Because he is a
23 mad man when he gets behind the wheel. He can't do
24 anything but speed, and he thinks every time he gets a
11:30:57 25 ticket that the police officer is wrong. I don't know

1 that he thinks the police officer is lying or making it up
2 but I have been with him and I'm traveling in the car when
3 he gets pulled over and I look at him like, well, why do
4 you think you shouldn't get this ticket? You were
5 speeding like crazy.

6 I would not -- if I was representing a police officer,
7 I would not want him to be a juror because he would be
8 biased and/or prejudiced when he walked in the door when
9 he is judging that police officer if the police officer
10 were a civil defendant in the case.

11 Does that make sense to anybody? Does that not make
12 sense to anybody that that is the kind of bias and
13 prejudice we're talking about here? My brother isn't
14 biased or prejudiced against anybody for any reason that
15 is like the color of your skin or your religion or the
16 fact that you are female or anything like that, but he is
17 biased and prejudiced on the issue of police officers.

18 Do any of you all have that same bias and prejudice --
19 and it's okay -- about a topless club? I represent a
20 topless club, ladies and gentlemen. Okay. I'm just going
21 to be candid with you. I own that. I represent a topless
22 club. The topless club is the defendant in this lawsuit.
23 Do any of you have a preconceived bias or a preconceived
24 prejudice in your mind about topless clubs?

25 PROSPECTIVE JURORS: (Several hands raised.)

1 MR. WALLACE: Okay. Number 15 and Number 21, I
2 think, Judge, we're going to talk to them separately,
3 correct?

4 THE COURT: That is correct.

11:32:24 5 MR. WALLACE: Anyone else? Number 9, yes, sir.

6 PROSPECTIVE JUROR: As to the question we were
7 asked before in regard to making a decision on the law,
8 yes, I may have a bias towards topless clubs, but I can
9 still make a decision based on the law.

11:32:37 10 MR. WALLACE: Okay.

11 PROSPECTIVE JUROR: That's why I didn't come
12 forward before, but it was specifically asking about in
13 regards to the law. You asked the more general question
14 as part -- and I think most people in here would probably
11:32:47 15 have some kind of bias.

16 MR. WALLACE: That's what we're here to find out,
17 okay, because all we want are fair and impartial fact
18 finders. That's all we want. If you have a preconceived
19 bias or a preconceived prejudice against topless clubs,
11:33:03 20 then I would like to know.

21 PROSPECTIVE JUROR: Yeah.

22 MR. WALLACE: You would have one.

23 Do you want to do that separately?

24 THE COURT: I have noted it.

11:33:12 25 MR. WALLACE: Thank you.

1 Thank you for your candor. We really need that candor
2 and that kind of honesty.

3 Anybody else? And it's okay to hold up your hand. I
4 promise I won't yell at you. Only the Judge can yell at
5 anybody in this courtroom.

6 PROSPECTIVE JURORS: (No response.)

7 MR. WALLACE: Okay. Thank you. I get to pick on
8 Juror Number 3 and ask you a question, if you don't mind.

9 PROSPECTIVE JUROR: Go right ahead.

10 MR. WALLACE: I have seen your data sheet. You
11 said that you have driven by Moments. Anything about you
12 driving by Moments or where you live cause you to have any
13 kind of opinion one way or the other on any subject at all
14 about my client?

15 PROSPECTIVE JUROR: Not at all.

16 MR. WALLACE: Okay. And Number 36, I guess I'll
17 ask you that same question because you have driven by
18 Moments as well. Anything about you driving by it or
19 anything about you knowing of its existence give you any
20 knowledge about Moments?

21 PROSPECTIVE JUROR: No.

22 MR. WALLACE: Thank you. And, sorry, I've got to
23 come back to you, Number 36, as well. You said you know
24 something about the FLSA from reading an article about a
25 case similar to this.

1 PROSPECTIVE JUROR: Yes.

2 MR. WALLACE: Was it an article dealing with
3 dancers and topless dancers and a gentleman's club?

4 PROSPECTIVE JUROR: Yes.

11:34:44 5 MR. WALLACE: What did you learn about that?

6 PROSPECTIVE JUROR: I learned that dancers
7 actually have grievances towards not being paid minimum
8 wage.

9 MR. WALLACE: When did you read that article, if
11:34:57 10 you remember, roughly?

11 PROSPECTIVE JUROR: Four or five years ago.

12 MR. WALLACE: Do you know what club it dealt
13 with?

14 PROSPECTIVE JUROR: No.

11:35:05 15 MR. WALLACE: Did you form any opinions after
16 reading that article one way or another, good, bad, or
17 indifferent?

18 PROSPECTIVE JUROR: Yes.

19 MR. WALLACE: Do you want to do that separately?

11:35:12 20 THE COURT: Yes.

21 MR. WALLACE: Thank you, again, for your candor.
22 Juror Number 12.

23 PROSPECTIVE JUROR: Yes, sir.

24 MR. WALLACE: I think you said you also read a
11:35:24 25 press account.

1 PROSPECTIVE JUROR: Yes. It was just a
2 publication in SHRM. I get a monthly SHRM newspaper, if
3 you will, and I read up on different articles, different
4 cases, and I just read one about the FLSA. That's it.

11:35:42 5 MR. WALLACE: Okay.

6 THE COURT: Just a moment. Do I hear an
7 electronic device? No. All right.

8 MR. WALLACE: I'm not familiar with that. What
9 is SHRM?

11:35:56 10 PROSPECTIVE JUROR: It is Society for Health --
11 Human Resources Management.

12 MR. WALLACE: Thank you. What did you learn
13 about the FLSA, if anything?

14 PROSPECTIVE JUROR: It was just a case. It was
15 -- honestly, it was so many years ago that I read it, I
16 don't remember what it was about, to be honest with you.
17 They just give inserts and stuff and just talk about,
18 like, the case that happened. Like I said, it was so many
19 years ago. It was just a random article, obviously.

11:36:22 20 MR. WALLACE: As I understand it, you are in
21 human resources; is that correct?

22 PROSPECTIVE JUROR: Yes, sir.

23 MR. WALLACE: You have 300 employees or so?

24 PROSPECTIVE JUROR: 650.

11:36:31 25 MR. WALLACE: 650. I don't envy your job at all.

1 Do you deal much with the Fair Labor Standards Act?

2 PROSPECTIVE JUROR: Not really.

3 MR. WALLACE: Do you ever even look at it?

4 PROSPECTIVE JUROR: Maybe if something pops up,
11:36:42 5 but I have been in HR for 20 years. So it's been very
6 rare, honestly.

7 MR. WALLACE: Okay. Number 24, you earlier, when
8 the judge was talking to you, Judge Bennett was talking to
9 you, you said -- I'm not going to quote you exactly. But
11:37:22 10 something like you can't believe that this law exists.

11 What law? The minimum wage law?

12 PROSPECTIVE JUROR: Well, I just -- I have never
13 heard of people not getting paid minimum wage, even if
14 they are an employee or not an employee. If you get paid,
11:37:38 15 you don't get paid a dollar an hour. That's what I'm
16 talking about. I didn't even know that could happen. I
17 had no idea.

18 MR. WALLACE: Okay.

19 PROSPECTIVE JUROR: That's what I meant.

20 MR. WALLACE: You are familiar, though, that
21 people contract their work out and are paid differently
22 than, for example, \$7.25 an hour, correct?

23 PROSPECTIVE JUROR: I know that -- as far as I
24 know -- this is what I know. Minimum wage is the minimum
11:38:05 25 you can pay. That's it. I didn't know you could go lower

1 than that. That's why I was, like, shocked and surprised.
2 I was, like, wow.

3 MR. WALLACE: But you are aware you can make more
4 than minimum wage, right?

11:38:18 5 PROSPECTIVE JUROR: Oh, yeah. That's why it's
6 called minimum wage. My response is wow. When I heard
7 that it's -- you know, it doesn't even have to be minimum
8 wage, I said, wow, to me, that they can be paid less than
9 that. I was like, oh, no. Maybe I'm still confused.

11:38:38 10 That's why I raised the concern.

11 MR. WALLACE: That's fair. Thank you.

12 PROSPECTIVE JUROR: I still don't know what the
13 answer is.

14 MR. WALLACE: Okay. Juror Number 15, sorry to
15 pick on you but I understand that someone important in
16 your life is a lawyer and does dram shop work which deals
17 with bars, and my client is a bar.

18 Do you know what type of dram shop work?

19 PROSPECTIVE JUROR: I thought it was insurance
11:39:15 20 defense.

21 MR. WALLACE: He does insurance defense?

22 PROSPECTIVE JUROR: Yes.

23 MR. WALLACE: That answers my question. Thank
24 you. I know of your husband. That's why I know that much
11:39:22 25 about it, but I didn't know what kind of work he did.

1 PROSPECTIVE JUROR: Okay.

2 MR. WALLACE: Give me one moment, Your Honor, and
3 I'll try to cut this down.

4 THE COURT: Very well.

11:40:04 5 MR. WALLACE: Your Honor, I would like to tender
6 the panel back to you. We are happy with all of these
7 jurors.

8 THE COURT: Thank you, Counselor.

9 Now, ladies and gentlemen, let me tell you the
11:40:17 10 process. I had mentioned earlier that we are going to be
11 in trial through the close of business on Thursday. So
12 for today, we will take a lunch break; and for those who
13 have been selected, you'll come back. We're not going to
14 take a lunch break now. We're going to select the jury,
15 take a lunch break, and those that have been selected,
16 we'll go to 5:00 today. You'll return. And then
17 tomorrow, Tuesday; Wednesday; and Thursday, for purposing
18 of planning, you'll be here at the courthouse 9:00 to
19 5:00.

11:40:50 20 So I know it's the summer months. If you have a minor
21 child, meaning 12 or less, who will be left unattended as
22 a result of you being here, I need to know that.

23 If there is an elderly person who is unable to care
24 for themselves, because you are their guardian or
11:41:11 25 caretaker, who will be left unattended as a result of your

1 jury service, I would need to know that.

2 If you have a medical condition that would prevent you
3 from being here 9:00 to 5:00 each day, I would need to
4 know that. If you have a medical appointment that it took
5 you four months to set and you have been waiting for it
6 and it's coming up this week and you would be forced to
7 reschedule and have to wait another four months, something
8 that unusual, I would need to know that.

9 The fact that you are busy at work and there is a
10 stack of paper waiting for you is not a sufficient reason
11 for you to be excused from this panel. If that was the
12 case, it would be almost impossible to seat a jury.
13 Everyone is busy and I appreciate and respect that and
14 that's why I try to be as efficient as possible.

15 So, minor child left unattended, elderly person left
16 unattended who is unable to care for themselves, medical
17 condition, or you have my fourth category. Again, it's
18 the summer. Some of you may be sending kids off to
19 school -- and I'm doing the same a little bit later -- and
20 you are scheduled to go off to university orientation with
21 your child and, as a result, you are scheduled for this
22 week or there is something -- you are leaving for your
23 40th wedding anniversary on Wednesday, something really
24 truly unusual like that, I need to know. Again, busy at
25 work, you prefer to be somewhere else, that's not

1 sufficient.

2 We're going to excuse you out into the hallway. So if
3 you have one of those conditions that I just mentioned, a
4 minor child, elderly person, medical condition, truly
5 unusual circumstance, the law clerk will be standing --
6 stand up, please -- will be standing outside. Approach
7 him. Give him your juror name and your reasoning and then
8 I'll make a list and I'll call you back in -- thank you --
9 and I can address that issue. We're not going to do it
10 here as a whole.

11 There are some of you I'm going to want to follow up
12 with, based upon the questions that I asked and the
13 answers you provided. So some of you will be called back
14 in. So as a result of this, my plan is to go ahead and
15 work through this now, not break for lunch, and bring
16 everybody back. This should take, hopefully, no more
17 than, you know, 45 minutes or an hour, at the most, if not
18 less than that.

19 If we can do that, then we'll select the jury, send
20 those of you who have not been selected home; and those of
21 you who have been selected, we will break for lunch at
22 that point and then commence the trial.

23 So as a result of working through this, do not leave
24 the floor because we may be looking for you to come back
25 in and to speak with me or it may be time to come back in

1 as a group. If you are not here, everyone has to wait.
2 We cannot proceed unless everyone is present.

3 There are restrooms. There are two sets of restrooms
4 on this floor on either side. If you need a cigarette
5 break, you need to speak with the law clerk, who will tell
6 you how much time you have to do that, if you are able to
7 do it. But is there anyone who has to eat right now as a
8 result of a medical condition?

9 PROSPECTIVE JURORS: (No response.)

10 THE COURT: No hands. Perfect. All right. So
11 that's the goal is to work through this and to move
12 through this as quickly as possible. Any questions about
13 that process from the left?

14 PROSPECTIVE JURORS: (No response.)

15 MR. COOK: Your Honor, may I step out? I need to
16 wrangle with --

17 THE COURT: Yes. Any questions about that
18 process to the left? Any questions about that process to
19 the right?

20 PROSPECTIVE JURORS: (No response.)

21 THE COURT: Okay. So the lawyers and I are now
22 going to talk about you behind your backs while you are
23 out in the hallway. So, please, again, do not leave the
24 floor unless you have informed the law clerk so that we
25 will be able to find everyone.

1 So at this time, you are excused to the hallway. All
2 stand for the panel. You may go out into the hallway now,
3 panel.

4 (Prospective jurors exited courtroom at 11:45 a.m.)

11:46:35 5 THE COURT: All right. Counsel, we have been
6 going at it now for almost two hours. I'm going to give
7 you a bio break. As opposed to going out into the
8 hallway, unless you need to go to your attorney waiting
9 room -- thank you. You all can be seated -- you can go
11:46:52 10 through these doors, this door. When you walk through the
11 door, you are going to be in the hallway. It will be a
12 left. Follow the hallway. As soon as you pop out of that
13 door and open the door, to the right will be the jury
14 room, my jury room. You may use the facilities in the
15 jury room. Men and women are located in there. You can
16 use them. And then, you can come back through the same
17 door and enter through this door and take your seat back
18 at counsel table.

19 My goal, again, is to try to work through this and
11:47:21 20 then send everyone away for lunch. Now -- so the folks
21 that we need to talk to on my list, I have juror number --
22 I hope I can get this in order here -- Juror Numbers 15,
23 20, 21, I'm sorry, Juror Number 9, Number 22, Number 27,
24 and Number 36. One, two, three, four, five, six -- those
11:48:47 25 seven jurors are the ones, based upon their answers, I

1 think may require some follow-up regarding potential cause
2 issues. Were there any others?

3 MR. WALLACE: Your Honor, I believe Number 24
4 raised their hand about being unable to be fair and
5 impartial.

6 THE COURT: 24. You are right. I am going to
7 add Number 24. Any others that I missed?

8 MR. BERLANGA: No, Your Honor.

9 THE COURT: Okay. Are there any others from the
10 plaintiff that you need to talk to?

11 MR. BERLANGA: No, Your Honor.

12 THE COURT: Any from the defense, other than what
13 I have outlined already?

14 MR. WALLACE: I don't believe so.

15 THE COURT: Perfect. That's even better. So
16 let's take a ten-minute bio break, and we'll resume at
17 noon. I have to go cancel a dentist appointment.

18 (Recess from 11:49 a.m. to 11:59 a.m.)

19 THE COURT: Counsel, in addition to the jurors
20 whom we've identified as 9, 15, 20, 21, 22, 24, 27 and 36,
21 three -- I'm sorry -- two additional jurors have
22 identified themselves as wanting to come in and speak to
23 me. Juror Number 8 and 21 also identified himself and
24 Juror Number 29.

25 From the judge's list, my list, are there any that the

1 parties want to agree to before we go through that
2 process?

3 MR. BERLANGA: I believe we agree to all, Your
4 Honor.

12:00:01 5 MR. WALLACE: I'm checking with my co-counsel on
6 one. If you'll give us two minutes, I believe that --
7 we'll call it the judge's list -- 9, 15, 20, 21, 22, 24,
8 27, and 36 that the parties would agree they should be
9 struck for cause.

12:00:15 10 THE COURT: Well, if there is a motion and there
11 is no objection, then we'll proceed in that fashion.

12 MR. WALLACE: Defense would make a motion that
13 Juror Panel Numbers 9, 15, 20, 21, 22, 24, 27, and 37 --
14 36, pardon me, be struck for cause.

12:00:32 15 THE COURT: Any objection?

16 MR. BERLANGA: No objection, Your Honor.

17 THE COURT: Juror -- hold on. Let's see here --
18 9, 15, 20, 21, 22, 24, 27, and 36 are stricken for cause
19 on the motion of the defense to which the plaintiff does
20 not object; is that correct?

21 MR. WALLACE: Yes, Your Honor.

22 THE COURT: Very well. I'll need to see Juror
23 Numbers 8 and 29. Well, let's start with 8 and see where
24 we are at. One other point -- go ahead -- before you come
25 back in.

1 I have been informed that we may have some clean-up on
2 Juror Number 15. That was the juror who has a husband who
3 is a lawyer. I understand that she has had an emotional
4 reaction to being informed regarding her husband's
12:02:16 5 practice. And so I'm going to bring her in to see if we
6 can address that.

7 MR. WALLACE: Okay.

8 THE COURT: I think you mentioned that he
9 represents bars.

12:02:34 10 MR. WALLACE: He does dram shop litigation on the
11 insurance defense side.

12 THE COURT: Right. And I'm not sure what
13 happened, but maybe she took offense to that. So we need
14 to address that.

12:02:43 15 MR. WALLACE: Okay. Thank you, Your Honor, for
16 letting me know.

17 (Prospective Juror Number 8 approached the bench.)

18 THE COURT: Juror Number 8. Sir, if you'll come
19 up to the podium. Pull that mic towards you and tell me
12:02:59 20 your name and your juror number.

21 PROSPECTIVE JUROR: Carlos Cantu, III, and I'm
22 Juror Number 8.

23 THE COURT: Mr. Cantu, I understand you had an
24 issue you wanted to bring to my attention.

12:03:09 25 PROSPECTIVE JUROR: Yes, Your Honor. I have a

1 6-year-old and a 4-year-old. We live up in The Woodlands,
2 and my wife works in the evenings. I have to be home at
3 4:00 after work on Tuesdays and Wednesdays.

4 THE COURT: So if you were selected for this jury
12:03:22 5 and you had to serve to at least 5:00 on Tuesday and
6 Wednesday, would there be any childcare available for your
7 two minor children?

8 PROSPECTIVE JUROR: I would have to work here the
9 next several hours to get that arranged for Tuesday and
12:03:38 10 Wednesday. We typically don't have childcare.

11 THE COURT: Okay. Is it something that you can
12 do or you cannot do? And let me rephrase it. If it's
13 something that you can do, it's something I'm going to ask
14 you to do, to remain in the panel, the potentials.

12:03:56 15 PROSPECTIVE JUROR: Sure.

16 THE COURT: If it's something that you cannot do,
17 I'm not going to let your minor children go unattended.
18 So where are you on the ability to get this done? And you
19 said you typically do not have childcare. I'm not going
12:04:10 20 to require you to put your children in the care of
21 strangers if they -- if that's not something that you
22 normally do. So if it's for date night, whatever the case
23 may be, if you have sitters that you use that you are
24 comfortable with, that's one thing, but I'm not going to
12:04:25 25 make you create a new relationship that did not previously

1 exist.

2 PROSPECTIVE JUROR: Yes, sir. I just have to
3 make some phone calls to see if my sitters are available
4 tomorrow and the next day. That's something I don't know
5 yet.

6 THE COURT: Okay.

7 PROSPECTIVE JUROR: I can make those phone calls.

8 THE COURT: That's available to you?

9 PROSPECTIVE JUROR: Yes, sir.

10 THE COURT: Anything else, sir?

11 PROSPECTIVE JUROR: No, sir.

12 THE COURT: Thank you. You may be excused to the
13 hallway.

14 PROSPECTIVE JUROR: Okay.

15 (Prospective Juror Number 8 left the bench.)

16 THE COURT: Number 29.

17 MR. WALLACE: Can we even get to 29?

18 MR. WYLY: We can't.

19 THE COURT: We cannot. I didn't do the math.

20 MR. WYLY: If we excuse Number 8, we get to
21 Number 17.

22 THE COURT: Oh, I didn't do the math. Just a
23 moment. We don't need to see him right now.

24 Juror Number 15. This is some clean-up. You may have
25 gotten someone in the dog house.

1 MR. WALLACE: I sure hope not.

2 (Prospective Juror Number 15 approached the bench.)

3 THE COURT: Come on up, ma'am, to the podium. If
4 you will state your name and juror number, please.

12:06:27 5 PROSPECTIVE JUROR: XXXXXXXXXXXXXXXXXNumber 15.

6 THE COURT: Yes, ma'am. I was made aware that
7 you were potentially upset.

8 PROSPECTIVE JUROR: Yes. I didn't know my
9 husband represented strip clubs or anything like that, you
12:06:40 10 know.

11 THE COURT: I understand. I think you may have
12 misunderstood. I think -- I don't know your husband
13 personally; and from what I understood, your husband does
14 dram shop litigation.

12:06:57 15 PROSPECTIVE JUROR: I'm not sure what that is. I
16 know it's insurance defense.

17 THE COURT: Right. He represents -- if someone
18 is sued for selling liquor illegally or if someone had too
19 much to drink or if they are trying to get a liquor
12:07:14 20 license, that type, that's what "dram shop" means. It has
21 nothing to do with strip clubs or topless bars or anything
22 along those lines. So I just wanted to make sure that you
23 understood that. So if that was your understanding, it
24 was misplaced. "Dram shop" is a term of art that lawyers
12:07:37 25 use in regards to establishments like bars that sell

1 liquor. It could be a country club that sells liquor. So
2 it's any place that sells liquor --

3 PROSPECTIVE JUROR: Okay.

4 THE COURT: -- and serves liquor. So I hope that
12:07:54 5 that kind of clarifies it.

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: It was not a reference that dram shop
8 means strip club. No. Nothing like that. So I wanted to
9 make sure you understood that.

10 PROSPECTIVE JUROR: Okay.

11 THE COURT: Does that make you feel better?

12 PROSPECTIVE JUROR: Yeah. Because he would make
13 -- he would be happy that you explained it to me.

14 THE COURT: Tell him and make it clear to him
12:08:15 15 that he owes me one. That's the explanation as to what
16 dram shop means, ma'am. Okay. Do you feel better?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Thank you. I just wanted to make
19 sure you understood that, and we were not casting
12:08:31 20 aspersions on your husband or his practice.

21 PROSPECTIVE JUROR: Okay.

22 THE COURT: Thank you.

23 PROSPECTIVE JUROR: Thank you.

24 (Prospective Juror 15 left the bench.)

25 THE COURT: Very well.

1 MR. WALLACE: Your Honor, I would move that
2 Juror 15 be excluded for cause.

3 THE COURT: She has been excluded.

4 MR. WALLACE: Oh, she has.

12:09:00 5 THE COURT: Yes. That was part of your agreement
6 but --

7 MR. WALLACE: I missed it.

8 THE COURT: -- for a fellow practitioner, I
9 wanted to save his butt before he got home.

12:09:13 10 MR. WALLACE: Very well.

11 THE CLERK: Judge, Juror Number 29.

12 THE COURT: I don't think we're going to -- let
13 me do my math real quick. On my one, two, three, four,
14 five, six, seven, eight -- we have eight who have been
12:09:31 15 stricken for cause. We are going to select eight. There
16 are three strikes apiece for a total of, let's see, 14.
17 We're at about 24; is that right? Did I miss it? No.
18 Sixteen --

19 MR. WALLACE: Eight and eight, it would be 22.

12:10:01 20 THE COURT: Eight, eight and six.

21 MR. WALLACE: Correct.

22 THE COURT: Is that right?

23 MR. COOK: More importantly, we would pick from
24 the front, and most of the strikes are in the back.

12:10:13 25 THE COURT: We'll start with one. What I'm

1 saying is that so even with eight strikes --

2 MR. COOK: Six strikes, Your Honor.

3 THE COURT: No. No. Eight strikes for cause,
4 eight members, and then six strikes for preemptories, plus
5 eight selected, that only takes us through Juror
6 Number 22; is that correct?

7 MR. WALLACE: No, Your Honor.

8 THE COURT: Okay. Tell me where I'm missing it.

9 MR. WALLACE: Because we have struck --

10 THE COURT: I'm saying we're not even going to
11 reach 29.

12 MR. WALLACE: We are not even going to reach 20,
13 as I understand the math.

14 THE COURT: So your strike field is 20 or less.

15 MR. COOK: Right. Depending if Your Honor is
16 going to cut eight loose or not -- and it sounds like we
17 are not -- we're down to 16.

18 THE COURT: Now, as to Juror Number 8, he has not
19 indicated a reason on the record to be stricken for cause.

20 MR. COOK: I am happy to cut him loose. I agree
21 he has not struck himself.

22 THE COURT: Well, is there a motion?

23 MR. COOK: We move that he be excused.

24 THE COURT: For?

25 MR. COOK: Due to his conflict of leaving his

1 minor children unattended or potentially unattended.

2 THE COURT: Do you perceive that as cause from
3 the plaintiffs' table?

4 MR. COOK: Not from the legal standpoint, no,
12:11:38 5 Your Honor, I agree.

6 THE COURT: Just cause?

7 MR. COOK: Yes.

8 THE COURT: Okay. Is there any objection?

9 MR. WALLACE: I'm sorry, Your Honor.

10 12:11:45 THE COURT: As to -- the plaintiffs have moved to
11 strike Juror Number 8. Do you object?

12 MR. WALLACE: I do, Your Honor.

13 12:11:59 THE COURT: Okay. Very well. Then that motion
14 is denied. That being said, your three strikes -- let me
15 go back and clarify it. So we are through Juror Number 16
16 to get our eight; is that correct?

17 MR. COOK: That's plaintiffs' understanding.

18 MR. WALLACE: I believe that is correct. Math is
19 not my forte.

20 12:12:42 THE COURT: I counted 14 open slots, and that got
21 me to Juror Number 16 because the only two strikes within
22 that field are Juror Numbers 9 and 15.

23 MR. WALLACE: Correct.

24 THE COURT: And so your strikes are three apiece.

25 12:13:01 How long do you need?

1 MR. WYLY: Five minutes.

2 THE COURT: Five minutes. Perfect. You can go
3 to your attorney room or someone can use the jury room, if
4 you like.

12:13:11 5 (Recess from 12:13 p.m. to 12:25 p.m.)

6 THE COURT: Counselor, your jurors are Numbers 2,
7 3, 4, 8, 10, 12, 14, 16. All right. Bring them in.

8 (Prospective jurors entered courtroom at 12:24 p.m.)

9 THE COURT: All right. Does everybody have their
12:25:05 10 neighbor back?

11 PROSPECTIVE JURORS: Yes.

12 THE COURT: Very well. Please have a seat.

13 Thank you. I am now going to have the clerk of the
14 court to read out the names of the jurors who have been
12:25:28 15 selected. When you hear your name called, please come
16 through the center gate here and take a seat in the jury
17 box.

18 Madam clerk.

19 CASE MANAGER: XXXXXXXXXXXXXXXXXXXXXXX
12:25:39 20 XXXXXXXXXXXXXXXXXXXXXXX
21 XXXXXXXXXXXXXXXXXXXXXXX.

22 THE COURT: Please have a seat, sir. Sir, you
23 were selected. Yes. Come on up.

24 JUROR: Does it matter where? They have
12:26:19 25 different numbers.

1 THE COURT: Yeah. Just sit down. If you see a
2 place, you can have a seat with the materials that are
3 placed there. Thank you.

4 Counsel for the plaintiff, are there any objections to
12:26:40 5 the jury as seated?

6 MR. BERLANGA: No, Your Honor.

7 THE COURT: Counsel for the defense, are there
8 any objections to the jury as seated?

9 MR. WALLACE: No, Your Honor.

10 THE COURT: Very well. Ladies and gentlemen of
11 the jury panel, I want to thank you for your service. It
12 is very important for our democracy to have citizens such
13 as yourselves to come down here and to answer their call
14 to service.

12:27:08 15 In this country, citizenship is a wonderful thing. It
16 comes with lots of privileges, but occasionally it comes
17 with some duties. And this is one of those duties where
18 you have to step up and provide a service. Obviously, the
19 greatest service that a citizen can render to this country
12:27:28 20 is service in the armed forces to where they go out and
21 put their lives on the line to make -- leave their
22 families to make sure that our democracy is safe. But
23 just as important to our democracy are citizens who are
24 willing to step into a voting booth and decide who should
12:27:45 25 lead us down at city hall, down in Austin, or up in

1 Washington, D.C., or on the various school boards or
2 wherever we are electing our leadership.

3 Just as important is jurors such as yourself who come
4 down here and answer their jury summons and allow the
12:28:02 5 judicial branch of our government to operate by having
6 jurors who can come and be fair and impartial deciders of
7 disputes between their fellow citizens. I want to thank
8 you for your service.

9 With this, I want to make sure that we did this the
12:28:21 10 correct way. And by you coming down here, it is my goal
11 to make sure that the facilities that we afford you, the
12 way that we treated you were appropriate. So since your
13 arrival this morning, have you been treated with courtesy
14 and respect?

12:28:39 15 PROSPECTIVE JURORS: Yes.

16 THE COURT: Were there any issues in that
17 pipeline that I should be made aware of, such that the
18 next group will not have to encounter a problem?

19 PROSPECTIVE JURORS: No.

20 THE COURT: No. Were the restrooms clean?

21 PROSPECTIVE JURORS: Yes.

22 THE COURT: Good. And people always laugh when I
23 ask that, but that's important to me. When you come down
24 to a facility that is paid for by your tax dollars, I want
12:29:02 25 you to be treated with courtesy and respect. I want to

1 make sure that the facilities that we provide to you are
2 clean such that your comfort is important to me while you
3 are here. So again, I want to thank you for your service.

4 Ms. Edwards, are they done or do they have to be
12:29:20 5 called in?

6 CASE MANAGER: They must call the number.

7 THE COURT: There is a number you have been
8 provided. They will dictate to you whether or not your
9 service has been completed. But as far as your service
12:29:29 10 for this particular cause of action, it has reached the
11 end. So on behalf of the judges of the Southern District
12 of Texas, on behalf of the clerk's office and my staff,
13 thank you. Best wishes. And to the fathers who are out
14 there, belated happy Father's Day. You are excused.

12:29:52 15 All rise for the panel.

16 (Prospective jurors exited courtroom at 12:29 p.m.)

17 THE COURT: You can take a seat out there, if you
18 would like.

19 Ladies and gentlemen of the jury panel, will you
20 please stand and raise your right hand while the clerk of
21 the court administers the oath.

22 CASE MANAGER: Do each of you solemnly swear that
23 in the case now before the Court you will a true verdict
24 render according to the law as it may be given to you and
12:30:51 25 charged by the Court and to the evidence submitted to you

1 under the rulings of the Court so help you God?

2 JURORS: I do.

3 THE COURT: Thank you. Please be seated.

12:31:05 4 Ladies and gentlemen of the jury, I have many

5 instructions for you that will wait until after lunch.

6 But let me give you a few. First, you may remove the
7 numbers that you have on your shirts or blouse. There was
8 a juror badge on the booklet. You can place that on your
9 shirt or blouse now.

12:31:22 10 That badge identifies you as a juror in this case. It
11 is extremely important that you wear that here at the
12 courthouse. As you now have heard, there are going to be
13 multiple witnesses who are going to be coming in and out
14 of the courtroom, catching the elevators, walking through
15 the security line. When they see that badge, these
16 lawyers have instructed those witnesses that, hey, there
17 are jurors in the case that wear juror badges. Don't talk
18 in the elevator or security line around those guys. And
19 so when they see that, they will know not to talk about
12:31:39 20 the case, you know, that they are coming to testify, just
21 in passing to someone or each other in your presence.

22 Now, it is extremely important that you not discuss
23 this case with anyone. You have not heard any evidence in
24 this case. You may tell your employer, your spouse, or
12:32:13 25 whomever you need to tell, I got selected and I'm going to

1 be here through close of business on Thursday. Do not
2 tell them the type of case. Do not tell them the parties
3 involved. Because if you do that, if you tell them, oh,
4 I'm on a FLSA case, someone may blurt something out to
5 you, oh, I had those cases and that case is or I have been
6 there or whatever the case may be and they may blurt
7 something out that is not true evidence. And so it may
8 taint your view of the facts that you are going to hear in
9 this case.

12:32:47 10 So again, do not discuss the case with anyone. You
11 can't even discuss it amongst yourselves until such time
12 as I instruct you to do so. I have some other
13 instructions -- oh, part of that. Do not do any research.
14 Everyone has a smart phone or a laptop. Don't get on your
12:33:05 15 laptop or smart phone and start doing research about the
16 subject matter of this case or the names that you've heard
17 or anything because, again, you may be exposed to
18 something that is not for your consideration.

19 Now, I have other instructions. I'm going to wait
12:33:21 20 until after lunch. Let me give you your lunch options.
21 There are several options within walking distance so you
22 don't have to re-park. On the ground floor, the first
23 floor of this building, there is a deli. You don't even
24 have to walk out of security. Walk -- exit the elevators,
12:33:39 25 walk towards security, go to your left, and there is a

1 little place over there that sells hot sandwiches, cold
2 sandwiches, and soups and salads.

3 Another option is to walk outside of the building. As
4 soon as you walk out, with security at your back, you walk
12:33:54 5 out of the building. To your left, across the street, is
6 the Bank of America building. It's kind of reddish. Walk
7 across the street. Once you walk across the street and
8 now you are at the corner of the building, you can enter
9 that building one or two ways. You can walk and make a
12:34:09 10 left and go down the sidewalk and enter or you can
11 continue down the street and there is another entrance
12 right there. You have two ways to get into the building.
13 Once you walk inside the building, walk towards the center
14 of the building, there will be an escalator down to the
12:34:25 15 basement level, what we call the tunnel level.

16 Once you get down to that level, there are multiple
17 options. Directly behind the escalator, there is another
18 sandwich shop, hot sandwiches and cold sandwiches
19 made-to-order.

12:34:39 20 If you get off the escalator, you will see a hallway,
21 a tunnel, to your left. Walk down that hallway, and it
22 opens up into a food court. And in that food court, just
23 off memory, there is an Otto's Barbecue. There is a
24 Chick-Fil-A. Treebeards is there. There is a sandwich
25 shop. There is a salad shop. Lots of places to eat just

1 in that general area.

2 So again, your dining options over the lunch hour.

3 You can go downstairs to the ground floor here without
4 leaving the building. If you leave the building, walk out
5 of the front of the building, make a left, cross the
6 street to the Bank of America building, go to the center
7 of that building, take the escalator down. There is a
8 sandwich shop behind you or you could make a left, veer
9 left into the tunnel system, and you'll be in a food
10 court. There is a Sonic, all different kinds of options
11 down there or a couple of convenience stores that you can
12 buy things as well, too.

13 When you come back from lunch, do not come into the
14 courtroom. Go to the jury room. Ms. Edwards is going to
15 take you to the jury room and show you how to access the
16 jury room. That's a room for you. It has a refrigerator
17 in it, a microwave. There is water back there as well.
18 You can bring your lunch back or you can eat your lunch
19 wherever you are at and then come back after lunch.

20 Whatever you decide to do. But that jury room is your
21 home away from home. I don't even go into the jury room.
22 The only people that are allowed in there are you and
23 Ms. Edwards, who will come in and out and tell you when
24 you need to report into the courtroom.

25 So any questions about your lunch dining options?

1 JURORS: No, sir.

2 THE COURT: No. All right. Let's report back
3 here at 2:00. That gives you a little bit over an hour
4 and a half, since this is your first time leaving. Most
5 lunch hours are going to be an hour, but since this is --
6 I know you probably have some phone calls to make since
7 you got selected and have some business to tend to in that
8 regard, and that gives you a chance to go out and make
9 your lunch -- get your lunch.

10 At 2:00 we'll start up with the trial. When you come
11 back, I will give you the remaining instructions that
12 you -- that I need to provide to you, and we will go to
13 approximately 5:00 today.

14 Any questions?

15 JUROR: (Raised hand.)

16 THE COURT: Yes, sir.

17 JUROR: I'm assuming we're going to be allowed to
18 take notes.

19 THE COURT: Yes. That's part of my instructions
20 after lunch, and I'll explain all of that to you
21 afterwards. I figure your stomachs are empty. And so
22 I'll wait. Yes, you are going to be allowed to take
23 notes. I'll explain that in detail when you return.

24 Any other questions?

25 JURORS: (Shaking head negatively.)

1 THE COURT: Very well. If you'll step down, you
2 may follow Ms. Edwards into the jury room.

3 All rise for the jury.

4 (Jury exited courtroom at 12:37 p.m.)

12:38:03 5 THE COURT: Very well. Counsel for the
6 plaintiff, any additional items we need to take care of
7 outside the presence of the jury before we resume this
8 after the break?

9 MR. BERLANGA: Your Honor, we have two witnesses,
12:38:14 10 plaintiffs, that have to go today, I believe, no matter
11 what. I'm going to confirm that when we step outside.
12 The order may switch up what we initially represented to
13 the Court.

14 THE COURT: Make sure that the first person that
12:38:25 15 knows is defense counsel as to what those plans are and do
16 it as quickly as possible. Understood?

17 MR. BERLANGA: Yes, Your Honor.

18 THE COURT: Anything else?

19 MR. BERLANGA: No, Your Honor.

12:38:35 20 THE COURT: Anything from the defense counsel
21 that we can take care of outside the presence of the jury
22 before resuming for lunch?

23 MR. WALLACE: No, Your Honor.

24 THE COURT: We will resume at, as I said, 2:00,
12:38:46 25 correct?

1 MR. WALLACE: Yes, Your Honor.

2 THE COURT: Enjoy your lunch. See you back then.

3 (End of requested excerpt at 12:38 p.m.)

4 *Date: August 12, 2019*

5 ***COURT REPORTER'S CERTIFICATE***

6 *I, Laura Wells, certify that the foregoing is a*
7 *correct transcript from the record of proceedings in the*
8 *above-entitled matter.*

9

10 */s/ Laura Wells*

11 *Laura Wells, CRR, RMR*

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